

***United States Court of Appeals  
for the Second Circuit***



**TRANSCRIPT**





75-6138

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

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FRIEDA ROSENBERG,

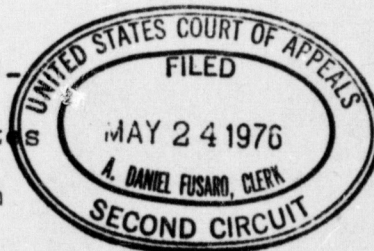
Appellant,

v.

ELLIOT RICHARDSON, Secretary  
of Health, Education and  
Welfare,

Appellee.

-----  
On Appeal From The United States  
District Court For The Eastern  
District of New York



TRANSCRIPT OF ADMINISTRATIVE PROCEEDINGS

VOLUME I

Frieda Rosenberg, et al.  
Max Rosenberg, W/E  
NYN 089-01-9395

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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Request of Charles M. Erisman, Acting Chairman, Appeals Council and Acting Director, Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, under authority conferred upon me by the Secretary, hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings relating to the claim of Frieda Rosenberg for wife's insurance benefits under title II of the Social Security Act, as amended, such transcript including application for benefits, testimony and other evidence upon which the decision of the hearing examiner of the Bureau of Hearings and Appeals, Social Security Administration, was based.	36 - 123

Date: July 2, 1971

*Charles M. Erisman*

Charles M. Erisman

(1)



Frieda Rosenberg, CI.  
Max Rosenberg, W/E  
A/N 089-01-9395

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Frieda Rosenberg, C1  
Max Rosenberg, WE  
A/N 089-01-9395

1

Exhibit  
No.

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Frieda Rosenberg, Clmt  
Max Rosenberg, W/E  
(Claimant)

089-01-9395  
(Social Security Number)

Max Rosenberg  
(Wage Earner) (Leave blank if same as above)

EXHIBITS

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NO.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
P.O. BOX 2518, WASHINGTON, D.C. 20013

3

HA:C  
REFER TO: 089-01-9395

March 5, 1971

BUREAU OF  
HEARINGS AND APPEALS

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Mrs. Frieda Rosenberg  
65-91 162nd Street  
Flushing, New York 11365

Dear Mrs. Rosenberg:

Your request for review of the hearing examiner's decision has been carefully considered by the Appeals Council. The Council's consideration of your request has included all the evidence in your case, the law and regulations applicable to your claim, the hearing examiner's evaluation of the facts and the reasoning in his decision, and your reasons for believing your claim should be allowed.

The Appeals Council has concluded that the decision of the hearing examiner is correct. Further action by the Council would not, therefore, result in any change which would be of advantage to you. Accordingly, the hearing examiner's decision stands as the final decision of the Secretary in your case.

If you desire a review of the hearing examiner's decision by a court, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from this date. See section 205(g) of the Social Security Act, as amended (section 405(g), Title 42, United States Code). If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant.

Sincerely yours,

Carl Monk  
Member, Appeals Council

Herman Elegant  
Member, Appeals Council

cc:  
Mr. Stuart Babitch  
Attorney at Law  
New York, New York 10017





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

REQUEST FOR REVIEW OF HEARING EXAMINER'S ACTION

Take or mail original and all copies to the District Office, Social Security Administration

4

CLAIMANT'S NAME

FRIEDA ROSENBERG

WAGE EARNER'S NAME

MAX ROSENBERG

SOCIAL SECURITY ACCOUNT NUMBER

089-01-9395

CLAIM FOR

☐ Entitlement to Disability Benefits (97)

☐ Continuance of Disability Benefits (98)

☒ Other WIFE'S INSURANCE BENEFITS

(Specify type claim)

I disagree with the hearing examiner's action on the above claim and request that the Appeals Council, Bureau of Hearings and Appeals, review it. My reasons for disagreement are:

Attach to this form, or forward within 10 days to the Appeals Council at the address shown below, any evidence or supplemental statement you wish to submit.

I understand the Appeals Council may deny my request for review, but if it grants the request:

I ☒ wish ☐ do not wish to appear before the Appeals Council in Washington, D.C. at my own expense.

I ☒ wish ☐ do not wish to file a brief or further written statement.

Signed by: (Either the claimant or representative should sign - Enter addresses for both)

SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE

STREET ADDRESS

101 Park Avenue

CITY, STATE, AND ZIP CODE

New York, New York 10017

TELEPHONE NUMBER

(212) 683-1700

CLAIMANT'S SIGNATURE

FRIEDA ROSENBERG

STREET ADDRESS

65-91 162d Street

CITY, STATE, AND ZIP CODE

Flushing, New York 11365

TELEPHONE NUMBER

591-1135

Is this request filed within 60 days of the hearing examiner's action? ☐ Yes ☒ No  
If "No" is checked: (1) attach claimant's explanation for delay; (2) attach any pertinent letter, material or information in the district office.

ACKNOWLEDGMENT OF REQUEST FOR REVIEW OF HEARING EXAMINER'S ACTION

Request for Review of Hearing Examiner's Action in this case was filed on the date shown and at the place indicated.

The APPEALS COUNCIL will notify you of its action on your request.

Date request for review was filed

10/21/70

Place where request for review was filed

Flushing, N.Y.

For the Social Security Administration

BY

(Signature)

(Title)

(Street Address)

(City)

(State)

(ZIP Code)

Appeals Council  
Bureau of Hearings and Appeals, SSA  
P.O. Box 2518  
Washington, D.C. 20013

APPEALS COUNCIL



LAW OFFICES OF  
MORRIS AARONS  
101 PARK AVENUE, NEW YORK, N. Y. 10017

5

JEROLD W. DORFMAN  
STUART BABITCH

(212) MU 3-1700

October 21, 1970

Department of Health,  
Education & Welfare  
Social Security Administration  
136-59 37th Avenue  
Flushing, New York 11354

re: FRIEDA ROSENBERG, Claimant For Insurance Benefits  
Wage Earner - MAX ROSENBERG, 089-01-9395

Gentlemen:

I am enclosing herewith copy of our request  
for review for the above matter.

Very truly yours,

*Stuart Babitch*

SB/lf  
Enc.

STUART BABITCH

cc: Bureau of Hearings & Appeals  
Chamber of Commerce Building  
89-31 161 Street  
Jamaica, New York

re: FRIEDA ROSENBERG, Claimant  
Claim for Wife Insurance Benefits  
of Wage Earner, MAX ROSENBERG  
S.S. # 089-01-9395

I am the attorney for Frieda Rosenberg in the above matter. This statement is a formal request for review of a decision of the hearing examiner for the Department of Health, Education and Welfare's Social Security Administration Bureau of Hearings and Appeals. The hearing for the above matter occurred on the 26th day of May, 1970, in the Chamber of Commerce Building, 89-31 161st Street, Jamaica, New York, by hearing examiner, Charles A. Smith.

Mr. Smith found that the applicant was not entitled to wife's insurance benefits under Section 202(b) of the Social Security Act.

We respectfully submit that his decision was not justified because of the inaccurate findings as to Facts 2, 3, 7 and 10. In addition to the legal insufficiency of the hearing examiner's findings, it also fails to recognize a 35-year marriage relationship between the parties, two children from the marriage and four grandchildren. This long standing typical marital rela-



tionshi, surely entitles the Claimant to a presumption of marriage. As there is no real evidence to disprove such marriage, the finding of the examiner should be reversed.

All the evidence produced at the hearing on the above date was testimony which proved marriage and that the parties were living together. There was no testimony produced to the contrary at this hearing.

I.

As to Number 2 of the Specific Findings, the hearing examiner states that the wage earner entered into a binding prior marriage agreement with one, Celia, whose last name is not given, in about 1919. However, there are no documents in the record, to the knowledge of the Claimant, that were ever offered as proof of this alleged first marriage. If such records do exist, then Claimant should have been offered an opportunity to inspect them.

Claimant also has difficulty accepting that there ever was such a marriage, whether valid or invalid, in light of the fact that the alleged wife was never identified by her last name. The best evidence rule should require the hearing examiner to produce the marriage certificate or agreement to support his contention that a binding marriage existed. This Claimant was not given an opportunity to submit any evidence contrary to this finding.

If the only basis for this finding appears to be a cryptic hearsay statement by the wage earner, this would not be sufficient in a court of law and, certainly, not sufficient to bind the Claimant in a matter so vitally important as social security.

Firstly, the Claimant did not have an opportunity to cross-examine this wage earner. Secondly, the wage earner is not qualified to make a legal judgment as to whether any marriage agreement he may have made is legally binding.

Therefore, Finding Number 2 supporting a previous marriage between the wage earner and a third party is not based on sufficient proof nor on adversary proceedings and is, therefore, invalid.

## II.

With respect to Paragraph 3 of the Findings of Fact, the hearing examiner states that "in about 1933 Max Rosenberg secured a 'mail order' divorce from Celia in Mexico. At that time, both Celia and Max Rosenberg were domiciled in and residents of the State of New York and neither Celia nor Max Rosenberg established residence in Mexico for the purpose of the divorce." (Emphasis ours).



Assuming for the purpose of argument that there was a marriage, no real evidence exists to prove the divorce was a mail order divorce. As the wage earner is not a lawyer, he is not qualified to characterize the legality of the divorce proceeding. Claimant was not given any opportunity to cross-examine the wage earner as to his cryptic statements of what actions he took 30 years ago. The hearing examiner is not even definite as to the date of this alleged divorce. Nor is the alleged wife, Celia, examined to substantiate whether she did in fact go to Mexico.

### III.

Claimant disputes the finding of Paragraph 7 of the hearing examiner, which states that "Under the laws of New York the ceremony between Max Rosenberg and the applicant on October 26, 1935 did not make them man and wife."

As there was insufficient evidence to support the finding that previous marriage existed, there was no obstacle to the creation of the marital bond between wage earner and Claimant.

### IV.

A major contention of the hearing examiner, based upon the belief that the Claimant's marriage was void, is that the parties "were not living in the same household" within the meaning

of Section 216(h) (1) (B) at the time the applicant filed her application for wife insurance benefits."

Claimant disagrees with this finding and in particular points to Section 404.1112 (b) (2) (3) of the Regulations of the Secretary of Health, Education and Welfare, 20 C.F.R.:

"The absence of one spouse from the place of abode in which both had customarily lived as husband and wife shall be considered temporary if the period of absence from their place of abode did not exceed six months and neither spouse was outside the United States and the absence was due to confinement in a curative institution."

The parties have lived together as husband and wife for 35 years. After a second coronary attack in October, 1966, the wage earner was ordered by his doctor to stop work and go away and relax. The wage earner's finances did not permit him to go away to a rest home. However, he was provided with a quiet place to stay by his sister.

Section 404.1112 (b) (2) makes the exception that the absence of one spouse from the marital place of abode should be considered temporary when, as in this situation before us, the period of absence is due to confinement in a nursing home or



other curative institution.

The wage earner was so confined in this case. Although he was being taken care of at his sister's home, this was, in actuality, a poor man's curative institution. Therefore, Claimant comes within the exceptions to the rule, and the spouse's absence is to be considered a temporary one, enabling Claimant to his insurance benefits.

Section 404.1112 also defines a temporary absence as one where the parties reasonable expect to resume physically living together at some time in the reasonably near future. As the wage earner has kept his voting registration and continues to pay the rent for his apartment and still considers his apartment in Flushing, New York, to be his home, the only reason for his absence is due to his doctor's advise to rest.

In addition, he returns to his home in Flushing, New York, with his wife every month. The wage earner's car ownership, registration and also his driver's license have their joint address in Flushing. He owns the apartment in which she resides. The garage bill for his car in that apartment was billed and paid by wage earner. Claimant does not own a car. Also, the wage earner receives mail at that address. For the summer of 1968, just before the claim

was submitted in January of 1969 for social security benefits, this couple lived together in their summer home in Bell Harbor, Queens, for four months. The wage earner obviously expects to resume physically living together with his spouse in Flushing, New York.

As to the time element, he expects to return as soon as he is feeling better. The wage earner is confident that he will recover in the reasonably near future.

The courts have been severely critical of narrow construction in cases interpreting such statutory requirements as "living together", "living with" or "living in the same household", or "living under the same roof". Decisions have attempted to reach the broad intent of the legislature from a practical and reasonable point of view. At the outset, the need to be physically living together is eliminated. The courts look to the intent of the parties as well as all the evidence rather than the one specific fact of living together.

As one poetic judge so aptly observed, "The agent of his country in diplomatic service in foreign lands, the merchant in the prosecution of his business on the islands of the sea and to better his fortunes, and the traveler for pleasure, or in the interest of science in the polar regions, are each and all living with their



wives and in their homes, in the meaning of our statute."

In Berg v. Industrial Commission 294 NW 506, the insured, Peter Berg, was a heavy drinker and his wife was in very poor health. She found it difficult to care for her husband, and, in addition, was afraid that he would be hurt in an accident coming home from work while in a drunken condition. Sleeping quarters were, therefore, provided for Mr. Berg in his son's factory and the parties were physically separated for their mutual welfare and convenience.

The separation continued until his death. Yet, the Industrial Commission held that she was living with her husband and supported this conclusion with the indisputable fact that there never was a legal or actual severance of or break in the marital relation which continued to exist between them. On appeal, the State Supreme Court affirmed this finding.

The facts in this case are similar to the Rosenberg matter. As Mr. Berg was provided with sleeping quarters by his son, Mr. Rosenberg was provided with a place to live in his sister's home. Also, both parties relocated due to their own welfare. The Court's statement that "It was never intended by anyone that his going...would be permanent, and there was consi-

derable discussion between him and his wife about his returning home", is language that also could be applied to both cases.

The fact that Mrs. Berg "discussed financial matters with him and he helped her out with whatever she needed" are facts that apply to both cases as it is established that Mr. Rosenberg has paid for the rent of his wife as well as for her health insurance.

The Court held that the lower court had correctly construed the meaning of the phrase "living with".

In Sheaffer v. Penn Dairies, Inc. 56 A2 368, 161 PA Super 583, 1948, the court offered guidelines by which to judge if a couple were living with each other.

In this case the parties from the initial day of the marriage until the husband's subsequent death, never lived together under the same roof. Yet, the court held that the parties were in substance and in spirit living with each other.

"Whether parties are 'living with' each other is a question of fact, but it is to be determined, not by consulting only one facet of the relationship, but by inspecting the whole picture. And where it is found that for the convenience of the parties, or for some other moving and reasonable motive they



dwell in separate homes without estrangement or repudiation or release of their legal obligations, and with constant recognition of the marital tie, it is no strain upon logic or credibility to find that they were 'living with' each other. (Cite omitted). For in this class of cases, we look beyond the form to the substance from outward appearances to the realities behind them.

The court further criticized the board's erroneous narrow interpretation of the requirement that the parties live together under the same roof by stating:

"The board, as its findings indicates, construed the phrase too narrowly, and having discovered the one fact that the parties did not occupy the same living quarters rested its findings that they were not living together solely upon that circumstance."

It was incorrect for the board to concentrate its attention upon this one fact.

In the Stewart Comp. v. Cristmas 79 So 2, 526, 1955, the court noted that living together does not always mean a common place of living. It "means living as husband and wife with voluntary recognition of the relationship and no design or agreement to live apart with the chief end in view that of living apart free from reciprocal mental rights and duties."

As in the Rosenberg situation, here the facts warrant a practical reason for the physical absence of one spouse from the house. The husband worked at his profession at logging camps but always came back home to provide all of the support money for his wife.

The court points out that while physically the parties may be separate, the parties are in spirit living together and this interest to live together brings the party within the meaning of the statute.

In Delaware County Trust Co. v. General Chemical Co. 5 4A 2, 608, the court was faced with the question whether a wife had been living with her husband when in fact the wife was separated from her husband for the last 12 years of his life because of her mental illness.

The court ordered compensation be paid to this wife finding that the character of the separation was not one that the statute intended. Here the parties were physically separated but out of necessity, brought about solely by the chronic illness of the wife. In the Rosenberg matter, too, a separation of a much shorter period was involved but it was out of necessity brought about solely by the illness of the husband.



The court states that a liberal interpretation should be given to the phrase "living with" her husband, and confirms our argument that "the question involved is largely one of intention."

"The question does not turn upon time or distance separating the parties, but upon the nature and character of the absence and the intention of the parties in relation thereto."

"If the phrase, as indicated, should receive the opposite interpretation, that is, that there must be a physical dwelling together in order to support a finding that a husband and wife were living together at the time of the husband's death, the purpose of the enactment in many instances would be defeated, as often a wife may be absent from home for long intervals although there be no intent to separate or change the relations or obligations created by the marriage contract."

V.

Where a marriage ceremony is shown to have been performed, it is presumed to have been properly and legally performed. Fisher v. Fisher, 250 NY 313, 165 NE 460, 61 ALR 1523; Sy Joc Lieng v. Sy Quia, 228 US 335, 57 L Ed 862, 33 S. Ct. 514. This presumption as to marriage is based upon the presumption of regularity of official acts.

Where persons live and cohabit as husband and wife and are reputed to be such, a presumption arises that they have been legally married, and this presumption, can be repelled only by the most cogent and satisfactory evidence. Hynes v. McDermott, 91 NY 451; Boyd v. Boyd, 252 NY 422, 169 NE 632. This presumption is seemingly applicable to all civil cases. Morris v. Miller, 4 Burr. 2057, 98 Eng. Rep 73; Wigmore, Evidence, Section 2085.

Here, as the parties have lived together for 35 years, and have children and four grandchildren, there is a very strong presumption of marriage and it can only be rebutted by very strong evidence to the contrary. Such evidence has not been produced in this case.

#### \_C\_O\_N\_C\_L\_U\_S\_I\_O\_N\_

The determining factor in this case is that the parties intended to preserve the spirit as well as the obligation of the marriage. Searching the record one does not find either a legal separation or an actual separation in the nature of an estrangement.

It would be a miscarriage of justice if Claimant were deprived of her social security benefits by the kind of technical



assault and unsupported proof contained in the hearing examiner's finding.

WHEREFORE, the applicant submits that she is legally entitled to receive benefits under the Social Security Act.

Dated: New York, New York  
October 21, 1970

Yours, etc.,

MORRIS AARONS, ESQ.  
Attorney for Claimant  
101 Park Avenue  
New York, N.Y. 10017  
(212) 683-1700

by: STUART BABITCH, ESQ.

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

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NOTICE OF DECISION

PLEASE READ CAREFULLY

If you disagree, in whole or in part, with the enclosed decision of the hearing examiner, you may request the Appeals Council to review it. However, your request for review must be filed within 60 days following the date shown below.

You, or your representative, may file the request for review at the nearest office of the Social Security Administration, or you may file the request for review with the hearing examiner, or with the Appeals Council.

Unless you file a timely request for review by the Appeals Council, you may not obtain a court review of your case under sections 205 (g) and 869 (b) of the Social Security Act.

This notice and enclosed copy of hearing  
examiner's decision mailed to the claimant ~~of~~ and her attorney,  
Mr. Jerold W. Dorfman, Esq., 101 Park Avenue, Room 702, New York, New York 10017,  
on 24 August 1970



DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

21

HEARING EXAMINER'S DECISION

In the case of

Frieda Rosenberg

(Claimant)

Max Rosenberg

(Wage Earner) (Leave blank if same as above)

Claim for

Wife's Insurance Benefits

089-01-9395

(Social Security Account Number)

This is a proceeding pursuant to section 205(b) of the Social Security Act, 42 U.S.C. 405(b), to determine whether the applicant, Freida Rosenberg, is entitled to wife's insurance benefits under section 202(b) of the said Act, 42 U.S.C. 402(b), as the wife of Max Rosenberg, insured under Social Security account number 089-01-9395. The only issue in dispute is whether Mrs. Rosenberg meets the definition of "wife," as that word is used in section 202(b).

Section 216(h)(1)(A) of the Act provides that a woman is the wife of an insured individual, for the purpose of section 202(b), if the courts of the state in which the insured individual is domiciled at the time such applicant files an application would find that such applicant and such insured individual were validly married at the time such applicant files such application.

The evidence in this case shows that Max Rosenberg, born on December 31, 1898, married Celia (last name before the marriage now shown in the record) in 1919. In 1933, while a resident of New York City, Mr. Rosenberg secured a "mail order" divorce in Mexico from Celia who also resided in New York City at that time. Neither party personally appeared in the divorce proceeding. Mr. Rosenberg does not think that Celia ever remarried.

On October 26, 1935, Mr. Rosenberg and the applicant, both residents of the State of New York, went to Greenwich, Connecticut, and participated in a marriage ceremony, believing that the ceremony joined them in marriage. The applicant and Mr. Rosenberg lived with each other for many years and have two children, ages 33 and 25. Neither the applicant nor Mr. Rosenberg has attained a divorce from the other.

Based on the above, it is clear that the applicant is not the wife of Mr. Rosenberg under section 216(h)(1) A of the Act. The law for application is

-2-

the law of the State of New York where Mr. Rosenberg resided when the application for wife's insurance benefits was filed. Under New York law, Mr. Rosenberg's Mexican "mail order" divorce would be considered a nullity. CALDWELL v. CALDWELL, 298 N.Y. 146, 81 N.E. 2d 60; QUERZE v. QUERZE, 290 N.Y. 13, 47 N.E. 2d; VOSE v. VOSE, 280 N.Y. 779, 21 N.E. 2d 616.

The controlling case in this instance is MAGNER v. HOBBY, 215 F 2d 190. In it, Magner, while living in New York, had secured a Mexican mail order divorce and then gone through a marriage ceremony in Greenwich, Connecticut, with a new bride. In a suit by the Greenwich, Connecticut bride for benefits under the Social Security Act, based on the theory that she was the wife of Magner, the court held that the first marriage was in full force and effect when Magner went through a marriage ceremony in Greenwich and, consequently, the Greenwich, Connecticut bride was not Magner's "wife" for Social Security Act purposes.

Section 216(h)(1)(B) of the Act provides an alternative means of meeting the "wife" requirement of section 202(b). As pertinent to this case, under section 216(h)(1)(B), the evidence must show that: (1) the applicant in good faith went through a marriage ceremony with Mr. Rosenberg resulting in a purported marriage between them which, but for the legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage; (2) the applicant and Mr. Rosenberg were living in the same household at the time the applicant filed her application for wife's insurance benefits; and (3) no other person is entitled to a benefit under section 202(b) as the wife of Mr. Rosenberg.

The hearing examiner is satisfied that the applicant thought on October 26, 1935 that the wedding ceremony she went through was in all ways valid and binding and she participated in the ceremony in good faith.

Section 404.1112 of the Regulations of the Secretary of Health, Education and Welfare, 20 C.F.R. 404.1112, reads:

404.1112 "Living in the Same Household."

(a) Defined. A husband and wife were "living in the same household" if they customarily lived together as husband and wife in the same place of abode. The temporary absence of one spouse from such place of abode does not preclude a finding that they were "living in the same household."

(b) Temporary Absence. The absence of one spouse from the place of abode in which



both had customarily lived as husband and wife shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from their place of abode did not exceed 6 months, and neither spouse was outside the United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.

Where the death of one of the parties occurred while away from their place of abode for treatment or care of an illness or injury (e.g., in a hospital), the fact that the death was foreseen as possible or probable does not in and of itself preclude a finding that the parties were living in the same household at the time of death.

(c) Absences other than Temporary. In situations other than those described in paragraph (b) of this section, the absence shall not be considered temporary, and the parties may not be found to be living in the same household. A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital difficulties and had not resumed living together before death. \* \* \* \*

The evidence shows that Mr. Rosenberg maintained his voting residence at the residence of the applicant and gave that address on his car registration. He has always supported the applicant and comes to see her from time to time. However, the language of the statute requires a finding that they were living in the same household when the applicant filed her application. They were not. Mr. Rosenberg was living with his sister in Spring Valley, New York, and intended to continue to live with her indefinitely into the future.

The applicant would not be entitled to the benefits of section 202(b) if another individual is or has been entitled to benefits under that section as the wife of Mr. Rosenberg. As we have seen, Mr. Rosenberg may have a "wife" other than the applicant. However, in order to establish entitlement one must, among other things, file an application for such benefits. No one else has ever filed such application so far as the record extends and thus this standard of section 216(h)(1)(B) would not militate against favorable action on an application by this applicant.

In sum, the applicant meets all the requirements of section 216(h)(1)(B) of the Act except that she was not living with Mr. Rosenberg when her application was filed. By way of dicta, it appears to the hearing examiner that this objection could be overcome by the resumption of their living together and the filing of a new application. However, she is not entitled to the benefits of section 202(b) of the Act based on the application before the hearing examiner.

#### FINDINGS AS TO THE FACTS AND CONCLUSIONS

The hearing examiner has carefully considered the entire record in this case and, based on the preponderance of the credible evidence, makes the following specific findings:

1. Max Rosenberg, Social Security Account No. 089-01-9395, is entitled to old-age insurance benefits under the Social Security Act.
2. Max Rosenberg entered into a binding marriage agreement with one Celia (last name now shown in the record) in about 1919.
3. In about 1933, Max Rosenberg secured a "mail order" divorce from Celia in Mexico. At that time, both Celia and Max Rosenberg were domiciled in and residents of the State of New York and neither Celia nor Max Rosenberg established residence in Mexico for the purpose of the divorce.



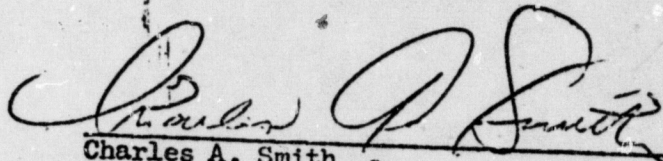
-5-

4. Max Rosenberg went through a marriage ceremony with the claimant on October 26, 1935, in Greenwich, Connecticut, at which time both Max Rosenberg and the applicant were residents of New York State.
5. On January 8, 1969, the applicant filed application for wife's insurance benefits under section 202(b) of the Social Security Act, as the wife of Max Rosenberg.
6. The law for application in determining the family status of the applicant and Max Rosenberg for the purpose of section 216(h)(1)(A) of the Social Security Act is the law of the State of New York.
7. Under the laws of New York, the ceremony between Max Rosenberg and the applicant on October 26, 1935, did not make them man and wife.
8. Under the laws of New York, the applicant would not have the same status with respect to the taking of intestate personal property of Max Rosenberg as a wife of the said Max Rosenberg.
9. When the applicant went through a marriage ceremony with Max Rosenberg on October 26, 1935, she did so in good faith and in the belief his previous marriage had been dissolved by a valid divorce.
10. Max Rosenberg and the applicant were not "living in the same household" within the meaning of section 216(h)(1)(B) at the time the applicant filed her application for wife's insurance benefits.
11. The record fails to establish that another person is or has been entitled to benefits under section 216(h)(1)(B) of the Social Security Act as the wife of Max Rosenberg.

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## DECISION

It is the decision of the hearing examiner that the applicant is not entitled to wife's insurance benefits under section 202(b) of the Social Security Act, based on her application of January 8, 1969.



Charles A. Smith  
Hearing Examiner  
Bureau of Hearings and Appeals, SSA  
P. O. Box 61529  
Houston, Texas 77061

Date: 24 August 1970



P. O. Box 61529  
Houston, Texas 77061

July 23, 1970

Mr. Stuart Babitch  
Morris Aarons Law Offices  
101 Park Avenue  
New York, New York 10017

Re: Frieda Rosenberg  
A/N 089-01-9395

Dear Mr. Babitch:

Due to the absence of Mr. Smith, I am taking the liberty of replying to your inquiry concerning the case of Mrs. Rosenberg.

Mr. Smith has been out of the office for an extended period of time, but he is expected to return next week and we anticipate a decision will be issued on this matter within the next two to three weeks.

We regret very much any inconvenience to the claimant.

Sincerely yours,

Agnes G. Huskins  
Hearing Assistant

LAW OFFICES OF  
MORRIS AARONS  
101 PARK AVENUE, NEW YORK, N. Y. 10017

28

STUART N. BABITCH

July 21, 1970

(2) MU 3-1700

Department of Health,  
Education & Welfare  
Bureau of Hearings & Appeals  
P. O. Box 61529  
2515 Federal Office Building  
515 Rush Avenue  
Houston, Texas 77061

Att: Mr. Charles Smith  
Hearing Officer  
Re: Frieda Rosenberg  
S.S. # 089-01-9395

Dear Mr. Smith:

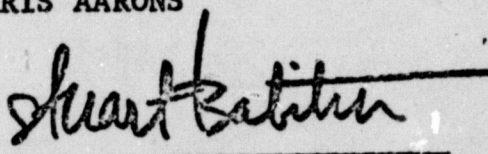
We hope that you have received our memorandum sent June 16, 1970. To date, our client has not been contacted as to the result of her case.

Please inform us as to approximately when a decision will be made so we may pass the information on to our client.

Very truly yours,

MORRIS AARONS

By:

  
Stuart Babitch

SB:if



LAW OFFICES OF  
**MORRIS AARONS**  
101 PARK AVENUE, NEW YORK, N. Y. 10017

29

STUART N. BABITCH

(212) MU 3-1700

June 16, 1970

Department of Health,  
Education & Welfare  
Bureau of Hearings & Appeals  
P. O. Box 61529  
2515 Federal Office Building  
515 Rush Avenue  
Houston, Texas 77061

Att: Mr. Charles Smith  
Hearing Officer  
Re: Frieda Rosenberg  
S.S. # 089-01-9395

Dear Mr. Smith:

*(See Exhibit No. 27)*

Enclosed herewith is the Memorandum of Law  
in the above mentioned matter.

Very truly yours,

MORRIS AARONS

SB:if  
Enc.

By:

*Stuart Babitch*  
Stuart Babitch

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

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NOTICE BY ATTORNEY OF APPOINTMENT AS REPRESENTATIVE

I have been appointed by Frieda Rosenberg  
(Claimant)

to act as (his) (her) representative with respect to (his) (her) claim under the Social Security Act  
based on the earnings record of Max Rosenberg 089-01-9395  
(Wage Earner or Self-Employed Individual) (Social Security Account Number)

I am authorized to obtain from the Administration information concerning this claim; and it is understood that any notice or request sent to me shall have the same force and effect as if sent to the above claimant.

I am in good standing in the courts in which I have been admitted to practice law.

Morris Arrons  
(Signature of Attorney)

Morris Arrons  
(Type or Print Name of Attorney)

101 Park Avenue  
(Address)

New York, New York 10017

683-1700  
(Telephone Number)

6/2/70  
(Date)

(SEE REVERSE SIDE FOR REGULATIONS AS TO FEES OF ATTORNEY FOR SERVICES TO A PARTY  
AND INFORMATION ON CONFLICT OF INTEREST)



LAW OFFICES OF  
MORRIS AARONS

101 PARK AVENUE, NEW YORK, N. Y. 10017

31

JEROLD W. DORFMAN  
STUART BABITCH

(212) MU 3-1700

May 26, 1970

Mr. Charles A. Smith  
Hearing Examiner  
Bureau of Hearings & Appeals  
Room 404  
Chamber of Commerce Bldg.  
89-31 161st Street  
Jamaica, New York 11432

Re: S.S. #089-01-9395  
Frieda Rosenberg

Dear Mr. Smith:

This is to confirm our telephone conversation of  
yesterday in which we agreed to reschedule the  
hearing for Frieda Rosenberg to Tuesday, June 2,  
at 10:30 A.M.

Sincerely yours,

MORRIS AARONS

BY:

*Stuart Babitch*

Stuart Babitch

SB:if

883-1700

LAW OFFICES OF  
MORRIS AARONS

STUART BABITCH

101 PARK AVENUE  
NEW YORK, N. Y. 10017

NOTICE OF HEARING

In the case of

Claim for

Frieda Rosenberg

(Claimant)

Wife's Insurance Benefits

Max Rosenberg

(Wage Earner)

089-01-9395

(Social Security Account Number)

TO: Mrs. Frieda Rosenberg  
65-91 162 Street  
Flushing, New York 11365

Pursuant to your written request and the provisions of Sections 205(b) and 1869(b) of the Social Security Act, a hearing will be held by the undersigned, a Hearing Examiner of the Bureau of Hearings and Appeals,

on the 26th day of May 1970 at 2:30 pm o'clock in Room 404 of

Chamber of Commerce Building, 89-31 161 Street, Jamaica,

(Number and Street)

(City)

New York

(State)

The general issues to be determined are whether you are entitled to wife's insurance benefits  
under the provisions of the Social Security Act.

The specific issues on which findings will be made and conclusions will be reached are whether you are  
living in the same household as the wage earner.

READ THE OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION REGARDING HEARING  
REMARKS:

IMPORTANT -- Please sign and return at once the enclosed postal card notifying me whether you will be present at the above time and place. No postage is required on this card.

Hearing Examiner

Charles A. Smith

Mail Address

Bureau of Hearings and Appeals  
Room 404 Chamber of Commerce Bldg.  
89-31 161 Street, Jamaica, NY 11432

Date

May 16, 1970

Telephone number

657-8700

cc: Representative (Name and Address)

Jerold W. Dorfman, Esq., Room 703, 101 Park Avenue, NY, NY 10017

District Office (Address)

136-59 37 Avenue, Flushing, New York 11354



## IMPORTANT INFORMATION

### Appearance at Hearing

The date and time of this hearing have been set aside especially for you. Your failure to appear without good reason may cause dismissal of your Request for Hearing. Even though there is good reason, any postponement will delay disposition of your case. If an emergency arises preventing your appearance after you mail the postal card stating that you will be present, notify the Hearing Examiner promptly and give your reasons. Also, advise the Hearing Examiner of the earliest date after which he can reschedule your case for hearing.

### Conduct of Hearing

The law places on you the burden of submitting evidence to support your claim. Bring to the hearing all evidence not already presented in your case.

You will have an opportunity to examine the documentary evidence on the day of the hearing. If you wish to examine it before the day of the hearing you may do so at the Hearing Examiner's office.

At the hearing the Hearing Examiner will inquire fully into the matters at issue. You may present evidence either in the form of written documents or the testimony of witnesses, or both. Your testimony and that of any witnesses will be under oath or affirmation, and a verbatim record of the proceedings will be made. You may suggest findings of fact or conclusions of law and present arguments orally or in writing.

### Representation

While it is not required, you may be represented at the hearing by an attorney or other qualified person of your choice, if you desire assistance in presenting your case. Any fee which your representative wishes to charge for his services in your case must be approved by the Bureau of Hearings and Appeals. Your representative must petition for fee approval at the conclusion of his services, and furnish you with a copy of his petition.

If you are found entitled to benefits and your representative is an attorney, 25 percent of your back benefits will normally be withheld for payment to your attorney upon approval of his fee. If the approved fee is less than the 25 percent we withheld, we will pay the difference directly to you. If the approved fee is more than 25 percent, payment of the difference is a matter to be settled between you and your attorney.

If your representative is not an attorney, none of your benefits will be withheld; and payment of the fee which is approved is a matter to be settled between you and him.

If you have any other questions, your local Social Security office will be glad to help you.

NY 10

C/O

Change of Address

54 Clinton St  
Spring Valley  
NY 10977

CHANGING ADDRESS

34

Dept of  
Health, Education & Welfare  
2 Congress Rd  
New City, Rockland County, N.Y. 10958

PCDEC 231969

Gentlemen:

Will you kindly change my  
mailing address as of Jan. 15, 1970  
from 292 N. Main St, Spring Valley, N.Y.  
to 54 Clinton St, Spring Valley, N.Y. 10977  
C/o Mendelson

Thanking you in  
advance

Sincerely,  
May Rosenberg  
A 089-01-9395 A.

May Rosenberg

No Assignment of  
Use is present.

OPR  
1/4/70



# REQUEST FOR HEARING

35

Take or mail original and all copies to the District Office, Social Security Administration

CLAIMANT'S NAME <b>Frieda Rosenberg</b>	CLAIM FOR <input type="checkbox"/> Entitlement to Disability Benefits (97) <input type="checkbox"/> Continuance of Disability Benefits (98) <input checked="" type="checkbox"/> Other Wife's Insurance Benefits
WAGE EARNER'S NAME <b>Max Rosenberg</b>	(Specify type claim)
SOCIAL SECURITY ACCOUNT NUMBER <b>089-01-9395</b>	

35

I disagree with the determination made on the above claim and request a hearing before a hearing examiner of the Bureau of Hearings and Appeals. My reasons for disagreement are: **I am the wife of the wage earner, our marriage is valid; we do reside together as husband and wife.**

Check one of the following:

☐ I have additional evidence to submit.  
(Attach such evidence to this form or forward to the District Office within 10 days)

☐ I have no additional evidence to submit.

*(RSI)*

Check ONLY ONE of the statements below.

☒ I wish to appear in person before the hearing examiner.

☐ I waive my right to appear and give evidence, and hereby request a decision on the evidence before the hearing examiner.

Signed by: (Either the claimant or representative should sign- Enter addresses for both. If claimant's representative is not an attorney, complete Form HA-512)

SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE <i>(Signature)</i>		CLAIMANT'S SIGNATURE <i>(Signature)</i>	
ADDRESS <b>101 Park Avenue (Room 702)</b>		ADDRESS <b>65-91 162nd Street</b>	
CITY, STATE, AND ZIP CODE <b>NEW YORK, N.Y. 10017</b>		CITY, STATE, AND ZIP CODE <b>FLUSHING, NEW YORK 11355</b>	
TELEPHONE NUMBER <b>683-1700</b>	DATE: <b>December 17, 1969</b>	TELEPHONE NUMBER <b>591-1135</b>	

Is this request filed within 6 months of the reconsideration determination? ☒ Yes ☐ No  
If "No" is checked: (1) attach claimant's explanation for delay, (2) attach any pertinent letter, material, or information in the District Office.

## ACKNOWLEDGMENT OF REQUEST FOR HEARING

Your request for a hearing was filed on **12/22/69** at **Flushing, NY**  
The hearing examiner will notify you of the time and place of the hearing at least 10 days prior to the date which will be set for the hearing.

Hearing Examiner Copy	TO: <input checked="" type="checkbox"/> Hearing Examiner <i>Jamiea Ny</i> (Location)
Claim File Copy	TO: <input type="checkbox"/> Hearing Examiner - Disability file in BDI TELETYPE BDI, BALTIMORE, MD.
	<input checked="" type="checkbox"/> Payment Center <i>New York</i> (Location)
	<input type="checkbox"/> BHI (Location)
	<input type="checkbox"/> DFC (BRSI) <input type="checkbox"/> CWAB (BDPA)

For the Social Security Administration

By: *Jas L. Lankin* (Signature) *cl* (Title)  
**736-5937** (Street Address)  
**Flushing, NY** (City) (State) (ZIP Code)  
**11355**

Interpreter Needed \_\_\_\_\_ (Language)

Servicing District Office Code **Flushing**

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BUREAU OF HEARINGS AND APPEALS

36

TRANSCRIPT

In the case of

Claim for

Frieda Rosenberg

(Claimant)

Wife's Insurance Benefits

Max Rosenberg

(Wage Earner)

089-01-9395

(Social Security Account Number)

Hearing Held

at

89-31 - 161st Street

Jamaica, New York

on

June 2, 1970

APPEARANCES: Frieda Rosenberg, Claimant  
Morris Aarons, Attorney for Claimant

CHARLES A. SMITH

Hearing Examiner

WINIFRED E. HAYOTT

Hearing Assistant



INDEX OF TRANSCRIPT

In the case of

Account Number

Frieda Rosenberg, Claimant

Max Rosenberg, Wage Earner

089-01-9395

Testimony of Mrs. Rosenberg . . . . . Commencing p. 4

Oral Argument of Mr. Aarons, Attorney . . . . . Commencing p. 14

(The following is a transcript of the hearing held before Charles A. Smith, a Hearing Examiner of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, on June 2, 1970, at Jamaica, New York, in the case of Frieda Rosenberg, claimant, based on the earnings record of Max Rosenberg, wage earner, social security account number 089-01-9395. The claimant, Frieda Rosenberg, appeared in person and was represented by her attorney, Morris Aarons, Esq.)

(The hearing commenced at 10:40 a.m., on June 2, 1970.)

OPENING STATEMENT BY HEARING EXAMINER:

We are ready to proceed with the hearing in the matter of Frieda Rosenberg, a claimant for wife's insurance benefits, based on the earnings record of Max Rosenberg, social security account number 089-01-9395. The record shows that application was made for benefits and there was a denial. She requested reconsideration and on October 14, 1969 a reconsideration determination was issued. It noted that Mrs. Rosenberg filed her application for wife's insurance benefits on January 8, 1969. The concluding paragraph of the reconsideration determination reads: "New York State, the place of the wage-earner's domicile would not recognize the validity of the wage-earner's divorce from his first wife. This is because neither the wage-earner or his first wife were domiciliaries of Mexico at the time the divorce was obtained. Since the divorce is not recognized by New York, Mr. Rosenberg could not have entered into a valid marriage with the claimant. However, the claimant could still qualify for wife's insurance benefits under Section 216(h)(1)(B) of the Act if it can be established that she was living with the wage-earner. The evidence submitted and the statements of Mr. Rosenberg indicate that the separation was not a temporary one and that ill health of the wage-earner was not the only reason for the separation. The separation was due to a generally inharmonious relationship



between the claimant and her husband. Mrs. Rosenberg was not living with her husband at the time she filed her application for wife's insurance benefits and thus cannot qualify as the wife of the wage-earner within the meaning of Section 216(h)(1)(B) of the Social Security Act. Upon reconsideration, therefore, the determination is affirmed."

Now, Counselor, when the matter comes before the Hearing Examiner the issue is wide open. That is to say if the reasons for the denial as set forth in the reconsideration determination are sound then, of course, the reconsideration determination would be concurred in by the Hearing Examiner or if there was some other reason why the claimant was not entitled to wife's insurance benefits as shown by the evidence, well then, of course, you would not be entitled to the benefits. Now, the reason for my reading the last paragraph of the reconsideration determination was to point out the position of the administrative personnel in the Social Security Administration that have considered this case in the past. I thought that a good way to proceed would be to read this paragraph and then ask counselor what his position is. Then we could go ahead and proceed to take the testimony. Is that acceptable, Counselor?

ATTORNEY: Yes.

HEARING EXAMINER: In other words, you want me to proceed with my discussion of that decision. Actually, what I think is this--as you know, in litigation there is one side that contends one thing and there is another side that contends the other thing. What I was attempting

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to do is this--to say now that the contention of the people in the Social Security Administration is as set forth in the paragraph that I read. Now, the burden is on the claimant and so what I would like the claimant to do is to present, if he would, his theory of this case and then to get evidence in support of his theory.

ATTORNEY: It's my impression that there are two things involved here: one, a valid marriage and if there was an impediment to the marriage, were they living together when Mrs. Rosenberg made application for the benefits. I'll address myself first to the question of valid marriage. Now, Mrs. Rosenberg married Max Rosenberg--

HEARING EXAMINER: I'm beginning to wonder, Counselor, maybe I started this off on the wrong trip, because if it recites what the evidence is, we might just as well present it in the form of evidence. If you intend to use her, the witness, to establish that, just swear her in. I think what I'm going to say, much of it is conceded. It's a question of application of the law to the situation. There may be some information I'm going to bring in.

ATTORNEY: I will ask one or two questions. Does she have to be sworn in or anything?

HEARING EXAMINER: I might say this, Counselor--yes. It seems to me an important question of law involved or at least presented in the paragraph that I read and that is, whether or not the separation was a temporary one for an indefinite period. Now, it seems to me that in view of the fact that there is this question of law, Counselor might want to submit a brief as to the law. In other words, if you form a theory what your case is and then submit a brief in support of your position, I think



it might be helpful. Incidentally, this proceeding is a proceeding under the Administrative Procedure Act. It is very similar to the procedure in a federal judicial court except that hearsay evidence is accepted in these proceedings. I think maybe what we ought to do is swear Mrs. Rosenberg in and then you establish the facts as you desire to show on the record.

Mrs. Rosenberg, will you stand up, please, and raise your right hand.

The claimant, FRIEDA ROSENBERG, having been first duly sworn, testified as follows:

EXAMINATION BY ATTORNEY:

Q Mrs. Rosenberg, you and Max Rosenberg were married when?

A 1935.

Q Do you remember the month?

A October 26.

Q Do you have a certificate showing that marriage?

A Yes.

Q I'd like to mark this as an exhibit. I think there is one exhibit in the file.

HEARING EXAMINER: Counselor, Exhibit No. 6 is a photostat of the paper that Counsel has presented.

ATTORNEY: Yes, so that is.

HEARING EXAMINER: It is Exhibit 6 in the file and this marriage certificate presented by Mrs. Rosenberg is a certificate of marriage, a copy of which is in the file marked Exhibit 6.

BY ATTORNEY:

Q Now, where were you married, Mrs. Rosenberg?

A Greenwich, Connecticut.

Q Who were you married before?

A A justice of the peace.

Q A justice of the peace?

A Yes.

Q Were you divorced before?

A Yes.

Q And when were you divorced?

A About three years before.

Q Before your marriage?

A Yes.

Q Now, was Max Rosenberg, to your knowledge, divorced before?

A Yes.

Q About two years before?

A Right..

Q Did you both, when you went to the justice of the peace in Connecticut, have your divorce papers with you?

A Yes, we did.

Q Max had his and you had yours?

A Right.

Q And did you show it to the justice of the peace?

A Yes.

Q Did he look at the papers?

A Yes.

Q Did he fill out any kind of a certificate?

A A form.



Q A form?

A Yes.

Q Did you say you were divorced from him?

A Yes.

Q Did Max say he had been divorced to him?

A Yes.

Q And after that, he performed the ceremony?

A Right.

Q And he married you?

A Right.

Q And he gave you that certificate that you presented here this morning, a copy of which, for the record, is enclosed in the record as Exhibit 6. Now, did you live together with Max since then?

A Yes.

Q Where did you live with him?

A We lived in the Bronx and we lived in Queens and we had a house in Rockaway and we lived there too.

Q Do you have any children from your marriage?

A Two, two children--a daughter and a son and two grandchildren.

Q How old is your daughter, how old is your son?

A My daughter was 33, June the 16th.

Q And your son?

A 25, April 13th.

Q And your daughter has two children from her marriage?

A Yes, two boys.

Q And they're both married?

A My grandsons?

Q No, I meant your daughter and your son?

A Are both married, right.

Q Do either one of them live with you?

A No.

Q Now, have you always lived together with your husband?

A Yes.

Q Has he always supported you?

A Yes.

Q Did you ever work?

A No.

Q Does he still support you?

A Yes.

Q Do you have a co-operative apartment in Queens right now?

A Yes.

Q And who owns the apartment?

A It's on his name but automatically--

Q It's on his name, on Max's name?

A Yes.

Q And what's the address?

A 65-91 162nd Street, Flushing.

Q And how long have you been living there?



A We're living there 16 years but not in this apartment. I had another apartment, 5 rooms, when my mother--rather father and mother and aunt lived with me. They both died and when Max got his first heart attack, he got another heart attack, we got another apartment on the ground floor.

Q A smaller one?

A Yes.

Q How long ago was that?

A 3 years.

Q 1966?

A Yes.

Q And you've been living there ever since?

A Yes.

Q Did you also have a home and were you and Max in Rockaway?

A Yes.

Q And that home was a private house with rooms that you could rent out?

A Rent out for the summer.

Q Did you live there with Max during the summer?

A Yes.

Q When did you buy that house? About when?

A About 4 years, in 1964.

Q 1964?

A Yes.

Q And when did you live in that house since 1964?

A We used to go out there in April and stay there until October.

Q Both you and Max?

A Yes, we lived in the house and ready to rent it out for the summer.

Q Did you live there together?

A Yes.

Q Did you have your own apartment?

A Yes.

Q Did you live there in '65--1965?

A Yes.

Q Did you live there in 1966?

A Yes.

Q 1967, 1968?

A Yes.

Q And Max was there with you all the time?

A Yes, all the time.

Q The entire summer?

A The entire summer.

Q And then there was a fire in the house in October of '68?

A Right.

Q So that you could never move back there again?

A Right.

Q So that in 1969 you did not live there?

A No.



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Q Now, after you returned from the house in 1968, did Max come back to live with you in the apartment?

A Yes, yes.

Q Did Max, after he had a heart attack, did he stop working?

A After the second heart attack.

Q The second one was '66?

A Yes.

Q Did he thereafter, at times, go to live with his sister in Spring Valley?

A Yes. He went up there to relax.

Q Was that a permanent change?

A No. He came back and forth and he said he was more relaxed up there than in the city, so he came and went. Every week, he'd come in or I'd go up there and that's the way it went on. He felt a little better then.

Q Are you two separated now?

A No.

Q You're together as husband and wife?

A Yes.

Q Does he support the house?

A Yes.

Q Does he pay the rent?

A Yes.

Q Does he vote from your address?

A Yes.

Q His license on the ownership of the car is your address?

A Yes.

Q Was your grandson bar mitzvahed?

A Yes.

Q Did you go together with Max to the bar mitzvah?

A Yes.

Q And gave him a watch?

A Yes.

Q Was he home before you went to the bar mitzvah?

A Yes.

Q Did you go to the bar mitzvah with him?

A Yes.

Q Does he still come home?

A Yes.

Q How often would you say he comes home to the house?

A Whenever he feels well enough to drive in or he calls me every other day and he comes in, stays a day or two. I used to go up there. Now I can't; I have trouble with my legs, I have sciatica, I can't travel up there.

Q Isn't it true that since he had his heart attack that he is very seriously worried about his life?

A Right.

Q And very nervous about it?

A Yes.



- 12 -

Q And excitable?

A Yes, very excitable, and he doesn't know what to do with himself.

Q Does he keep moving around?

A Always on the go.

Q Has he been to Florida this year in fact?

A Yes.

Q Did he come back to see you when he returned from Florida?

A Yes, and even before he went.

Q Did you together to your children's home to see the grandchildren?

A Drive to my daughter every week or every other week.

Q Is there any question about you separating from him or he separating from you?

A I don't know where they got that statement.

Q Do you go to functions together with him?

A Yes. In fact, his niece had a bas mitzvah and we were there together. It was before my daughter.

Q Does your husband know that you're coming up here?

A And he's very upset about it. He couldn't even come in--come down. I said, "Well, don't drive down." He says he doesn't understand what this is all about.

Q Oh, yes, I think there's something in the record there that shows in January of 1969--I think it's Exhibit 18, I saw that--it shows that--do you have Exhibit 18? Maybe I've got the wrong one. Let me see.

Exhibit--yes, here it is, Exhibit 18 which shows that a receipt from the Second Housing Company, dated March 1969, for rent due in advance of \$70.00 and garage of \$12.00. Now, Mrs. Rosenberg, Max owns the car, right?

A Right.

Q They have a garage in the house?

A Right.

Q And they charge separately for the garage?

A Yes.

ATTORNEY: I call your attention, Your Honor's attention to that receipt in January showing that he paid garage for his car for the month of January and it was paid in March of 1969. Now, I think the application was filed at about or certainly prior to March 1969.

HEARING EXAMINER: The application was filed on January 8, 1969. This is with regard to Exhibit No. 1.

ATTORNEY: So that at the time the application was filed, the evidence shows that the car was garaged in the building and paid for the garage in the building for the month of January 1969 and it was paid in March of 1969. I think that was produced by Mr. Rosenberg.

BY ATTORNEY:

Q When did you become 62, Mrs. Rosenberg?

A April 7th.

Q 1969?

A Right.

Q May I see that registration you have, please? (To Hearing Examiner) I show you this registration. (To claimant) Did you get



that from the Motor Vehicles Bureau?

A Yes.

Q When did you get that?

A Right after he got the car.

Q When did he get the car?

A September or October.

Q 1969?

A 1969, yes.

Q That shows his registration on the ownership of that car at your address in Flushing?

A Yes.

Q It was a secondhand car but for him it was new? He had bought it then?

A Right.

ATTORNEY: I'd like to have that marked into evidence, please.

HEARING EXAMINER: The paper to which Counselor has been making reference has been identified as Exhibit No. 23 and Exhibit No. 23 is accepted into evidence.

ATTORNEY: I'd like to address myself to the question of the validity of the marriage. I don't know what the examiner or the reviewer based his decision of invalidity of the marriage on. I'm looking through the record and there is no evidence whatsoever in there to substantiate any such decision. It's all a conjecture on his part from what I can see. If there is any evidence in the file, I would like to have my attention

called to it so that I could address myself to it. Now, under the law, it was well settled that a marriage is considered valid until proven otherwise, whether it's by the burden of proof or by going forward with the proof and that such invalidity can only be proven by the strongest evidence because of the presumption of marriage and the public policy which is the basis for that decision. I call your attention to the Court of Appeals Decision in re Dugro's Will, 261 Appellate Division 236, affirmed 287 New York 595--that's the highest court in the State--and I offer it to Your Honor to review on the question of law. Now, in order to oppose any evidence to the contrary of validity of the marriage, I must know what the evidence is and I don't see any at all in the file.

HEARING EXAMINER: Counselor, we'll just mark that which you have made reference to, that is the Dugro's case, as an exhibit so that we can have it among the documents.

ATTORNEY: May I also offer one more to Your Honor? This is the case of Apelbaum against Apelbaum, 7 A.D. 2d 911.

HEARING EXAMINER: Honestly, Counselor, I refrain from saying anything about that Mexican divorce question of law because of the fact there's a question of law and they might be right and they might be wrong but the exhibits in the case, if my understanding is correct, would not appropriately include the law on which the decision is based. Now, if the law is wrong in my judgment, then I will govern my actions accordingly, you know.

ATTORNEY: Well, I say that there's no evidence in the file upon



upon which they can base any such contention that that's an invalid divorce. They have got to come forward with proof because we show that we have a marriage that's valid as far as the whole world is concerned. They have been married 35 years, we produced the marriage certificate, there are children and grandchildren which represents the legality of it. You must have proof that it is not, that the marriage before was in existence, that it was not disposed of by proper divorce. You're not going to prove any impropriety to it. Here's a woman who has been married 35 years, there are children and grandchildren. It would be a disgrace for a government agency to come forward and declare that their marriage was illegal and that the children are illegitimate. It would certainly be against public policy for an agency to do it without absolute proof of the fact. This makes Max not her husband as the determination, no responsibility to support her. There would be an absolute injustice if the Board turns around and said that the evidence was that they are not married without basing it on substantial evidence. Let's put it the other way. Evidence substantially proves--there's a question of what substantial evidence is--evidence proving substantially that the marriage was invalid or that the divorce was invalid. In fact, I'm going to offer one more case, as long as I've got it--Myers against Tuttle, Appellate Division, Third Department under citation I have it 107 N.Y.S. 2d 158.

HEARING EXAMINER: Actually, Counselor, I thought that you might be happy if I put these in as exhibits, but really what they are are points of law. I put them in as exhibits so that they're in the file so that anybody else can have them. All right, Counselor, do you have anything else

that you would like to put in the record?

ATTORNEY: Oh, yes. I wanted to ask you one thing, Mrs. Rosenberg. Where are those divorces that were presented to the justice of the peace in Connecticut?

CLAIMANT: They were burnt in the fire--we had it in the basement and in the fire and that trunk burnt out.

ATTORNEY: Where was it?

CLAIMANT: I was living at that time with my parents in the Bronx.

ATTORNEY: In the Bronx? How long ago was that?

CLAIMANT: Many years ago when we first got married. That must have been about 32 years ago.

HEARING EXAMINER: Anything else, Counselor?

ATTORNEY: I think I've got it now. Did you want to do something about those exhibits? I don't know what your procedure is.

HEARING EXAMINER: We'll identify the decisions in the Dugro's will case to be Exhibit No. 24 and the Apelbaum case, 25, and the Myers against Tuttle, 26. We still haven't received any of these documents into evidence. Do you have any objections to any of these others? If you don't, well, we'll just--

ATTORNEY: Well, I can't concede the documents, the so-called papers there as any evidence. There are a lot of statements there that are hearsay and I certainly don't want to be bound by hearsay statements by people.

HEARING EXAMINER: I'll tell you what we'll do.



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ATTORNEY: I will concede that there are papers in that file numbered--those exhibits.

HEARING EXAMINER: All right. What I'm going to do is this--accept your statement as a blanket objection to any hearsay evidence in Exhibits 1 through 23 and I'm going to overrule that objection and then you have your--

ATTORNEY: My exception.

HEARING EXAMINER: --your exception. Okay?

ATTORNEY: All right.

HEARING EXAMINER: Is that all, Counselor?

ATTORNEY: I think that's it. Anything else you want to--you're keeping the registration, aren't you?

HEARING EXAMINER: What I'll do, what I'll do, I'll run this registration off and give it back to you, if you prefer, and use the copy as an exhibit. Would you rather have me do that, Mrs. Rosenberg? Do you want this back?

CLAIMANT: I think so.

HEARING EXAMINER: All right. I believe that's everything, Counselor. There being nothing further for inclusion in the record, this hearing is closed.

(The hearing was closed at 11:30 a.m., on June 2, 1970.)

HEARING EXAMINER: The record in this case was reopened at Houston, Texas, on June 19, 1970, to admit into evidence the following document which was submitted by claimant's attorney.

Exhibit 27--Memorandum of Law. .

There being nothing further, the record was thereafter closed.

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded by a closed microphone reporter at the hearing held in the above case before Hearing Examiner Charles A. Smith.

*Sally B. Friedman*  
Transcriber





# APPLICATION FOR WIFE'S INSURANCE BENEFITS

If you are awarded monthly benefits based on this application and such benefits continue to age 65, you will be automatically entitled to hospital insurance protection at age 65. In addition, this application form may be used for enrollment in the Supplementary Medical Insurance Benefits Plan.

Form Approved  
Budget Bureau No. 72-R0124

(Do not write in this space)

57

NOTICE—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Enter name of wage earner or self-employed person (hereafter referred to as "Worker") Enter his Social Security Number

MAX ROSENBERG

089 01 9395

I hereby apply for entitlement to all insurance benefits which may be payable to me under Title II and Part A of Title XVIII of the Social Security Act, as amended.

Enter your full name

FRIEDA ROSENBERG

1 Enter your date of birth (Show month, day, and year) Enter the name of the State or foreign country where you were born

APR. 7, 1907

NY, NY

2 Enter your maiden name

FRIEDA SILVERSTEIN

3 (a) Have you ever had a social security number of your own?

☒ YES (If "Yes," complete (b))

☐ NO (If "No," go on to Question 5)

(b) Enter your Social Security Number here

Your Social Security Number (If unknown, so indicate)

089 38 3317

4 (a) Are you now or have you been for any period in the past 14 months unable to work because of a disabling condition?

☐ YES (If "Yes," answer (b))

☒ NO (If "No," go on to Question 5)

(b) Enter the date on which your disabling condition began

Month, day, year

5 (a) Have you ever before filed an application with the Social Security Administration for monthly benefits or for hospital or medical insurance?

☐ YES (If "Yes," answer (b) and (c))

☒ NO (If "No," go on to Question 6)

(b) Enter name of person on whose earnings record you filed other application(s)

(c) Enter Social Security Number of person named in (b) (If unknown, so indicate)

If you are now AGE 62 or older, or you will reach AGE 62 in this month, or one of the next 3 months, answer Questions 6 and 7. If not, go on to item 8.

6 Were you in the active military or naval service after September 7, 1939?

☐ YES

☒ NO

7 Did you work in the railroad industry at any time on or after January 1, 1937?

☐ YES

☒ NO

EXHIBIT NO. 1

P1

8

- (a) Check (✓) whether your marriage to the worker was performed by:  
Clergyman or authorized public official ☒, or Other ☐ (Explain)

58

- (b) Enter below the information requested about each of your marriages. Include information on your marriage to the worker and any other marriages, whether before or after you married the worker.

Current or last marriage	To whom married	When (Mo., day, and year)	Where (Enter name of city and State)
	How marriage ended (If still in effect, write "Not Ended")	When (Mo., day, and year)	Where (Enter name of city and State)
Previous marriage	To whom married	When (Mo., day, and year)	Where (Enter name of city and State)
	How marriage ended	When (Mo., day, and year)	Where (Enter name of city and State)
Previous marriage	To whom married	When (Mo., day, and year)	Where (Enter name of city and State)
	How marriage ended	When (Mo., day, and year)	Where (Enter name of city and State)

(Use "Remarks" space for information about any other marriage)

Answer Question 9 only if you are applying as a divorced wife.

- 9 (a) Was the worker under a court order to contribute to your support? . . . . . ☒ YES ☐ NO
- (b) Was the worker contributing to your support? . . . . . ☐ YES ☒ NO

If you are now under AGE 66, answer Question 10. If you are AGE 66 or over, go on to Question 11.

You may receive a wife's benefit for any month in which you have in your care a child of the worker entitled to a child's insurance benefit because he (she) is under age 18 or, if 18 or over, because he (she) is under a disability (which must have begun before age 18). A child age 18 to 22 entitled as a full-time student will NOT enable you to meet the "in her care" requirement. A divorced wife cannot be entitled to benefits for months before age 62 even if she has an entitled child in her care.

- 10 Has an unmarried child of the worker (including natural child, adopted child, or stepchild) who is under age 18 or disabled lived with you during any of the last 13 months (counting the present month)? ☐ YES ☒ NO

(If "Yes," list the months in which such child lived with you.  
If all, write "ALL.")

EX-101 NO



Please read the following information before going on to items 11 and 12

59

Some or all of your benefits are not payable if, while under age 72, either you or the worker works for more than the monthly limit in employment (as defined below) or performs substantial services in self-employment in any month, and has earnings in excess of the exempt amount (as defined below) for the taxable year.\* This applies to all employment and self-employment, whether or not covered by the Social Security Act.

The monthly limit is \$125 per month for months in a taxable year ending prior to 1968 and \$140 per month for any taxable year ending after 1967. If the taxable year is a calendar year, the \$140 amount is effective January 1968.

The exempt amount of total earnings which a beneficiary may have without deduction from benefits is \$1,500 per year for a taxable year which ends before 1968. It is \$1,680 per year for taxable years ending after 1967. If the taxable year is a calendar year, \$1,680 is the exempt amount beginning 1968.

As an employee, you count the gross wages (not the take-home pay) you earn during the year, regardless of when the wages are paid to you. As a self-employed person, you count the net earnings from your business (after deducting allowable business expenses).

- 11 (a) How much were your total earnings last year? . . . . . \$ NONE  
If the total in (a) is over the exempt amount, answer (b). If less, omit (b) and (c) and go on to item 12.  
(b) Did you earn more than the monthly limit in employment or perform substantial services in self-employment in each month of last year?  
☐ YES (If "Yes," omit (c)) ☐ NO (If "No," answer (c))  
(c) Circle each month of last year in which you did not earn more than the monthly limit in employment and did not perform substantial services in self-employment.
- | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec |
|-----|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|
|     |     |     |     |     |      |      |     |      |     |     |     |

- 12 (a) How much do you expect your total earnings to be this year? (Count all of your earnings beginning with the first of the year and all expected earnings through the end of this year.) . . . . . \$ NONE  
If the total in (a) is over the exempt amount, answer (b). If less, omit (b) and (c).  
(b) Have you earned more than the monthly limit in employment or performed substantial services in self-employment in each of the months of this year including the present month?  
☐ YES (If "Yes," omit (c)) ☐ NO (If "No," answer (c))  
(c) Circle each month of this year including the present month in which you did not earn more than the monthly limit in employment and did not perform substantial services in self-employment.
- | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec |
|-----|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|
|     |     |     |     |     |      |      |     |      |     |     |     |

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which you earned more than the exempt amount, if you were under age 72 at least 1 full month of that year and received some benefit payment for such a month. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

- 13 Do you agree to file the annual report of earnings when required? . . . . . ☒ YES ☐ NO

If you are now under AGE 66 and do not have an entitled child in your care, answer Question 14. If you are AGE 66 or older, or you have an entitled child in your care, go on to Question 15.

For months in which you are at least 62 years of age and do not have in your care a child who is under age 18 or disabled, any benefits you receive will be payable only at a reduced rate and will continue at a reduced rate even after you reach 65. The amount of the reduction is 25/36

of 1% times the number of months from the start of your reduced benefits to the month you reach age 65. In figuring this reduction, the months of entitlement before you filed this application will be included, unless you state that you do not claim benefits for these months.

- 14 (a) I want benefits for all the past 12 months in which I was at least age 62.  
(This applies if you are now age 62 or over or will be age 62 in 3 months) . . . . . ☒  
OR  
(b) I want benefits beginning only with the month I reached or will reach age 65.  
(This applies if you are now age 65 or over or will be age 65 in 3 months) . . . . . ☐  
OR  
(c) I want benefits for months before age 65 (months in which I was at least age 62 or over) beginning with the month of: . . . . . ☐  
(Enter month and year)

\* The yearly period referred to in this and following items is the same 12-month period you use in figuring your income tax. If you use a fiscal year, that is, a taxable year that does not end December 31 (with income tax return due April 15), enter here the month your fiscal year ends.

Month

EXHIBIT NO. 1

(OVER)

PS

The events listed below may end or otherwise affect your entitlement to wife's benefits. If any one of these events occurs, you must notify the Social Security Administration. For some events, there are certain exceptions to the general rule that the event ends entitlement. Such exceptions are explained in the printed reporting instructions which you will receive. However, you must report an event even if you believe an exception applies. The Social Security Administration will advise you what additional information and evidence, if any, is needed, and will give you a decision on whether your benefits may continue.

(a) In all cases—report if the worker DIES. (You might then be entitled to widow's or mother's benefits.)

(b) If you are entitled to benefits as a wife—report if you are DIVORCED from the worker or your marriage to him is ANNULLED.

(c) If you are entitled to benefits as a divorced wife—report if you MARRY.

(d) If you are under age 62, or you are under age 65 and have not elected to receive reduced benefits—report if you NO LONGER HAVE IN YOUR CARE a child of the worker under age 18 or disabled, entitled to benefits.

- 15 Do you agree to notify the Social Security Administration promptly if any of the above events occur, and to promptly return any benefit check you receive if the check is for a month in or after the month in which any of the above events occurred? . . . . . ☒ YES ☐ NO

REMARKS: (You may use this space for any explanations. If you need more space, attach a separate sheet.)

I want separate checks for me and my husband because my husband is ill and gets his checks in the

Knowing that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

If this application (and, if relevant, the enrollment question below) has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.

1. Name Country,  
Address (Number and street, city, State, and ZIP Code)

I never worked

2. Name under social security  
Address (Number and street, city, State, and ZIP Code)

Signature (Write in ink)

Sign Here J. W. A. [unclear] NY PC JAN 16 1968

Mailing address (Number and street, P.O. box, or rural route)

65-91 162 St

City and State

FLUSHING, NY

ZIP Code

11365

Date (Month, day, and year)

1/8/68

Telephone number

591-1135

Enter name of county (if any) in which you now live

QUEENS

Answer the question below only if you are now AGE 65 or older, or you will reach AGE 65 in this month or one of the next 3 months.

### ENROLLMENT IN THE SUPPLEMENTARY MEDICAL INSURANCE BENEFITS PLAN

Your social security district office will be glad to explain this plan and to give you a leaflet containing information on the physicians' and surgeons' services and other medical services covered, premium amounts, enrollment periods, etc. A request for enrollment cannot be effective unless it is made within one of the enrollment periods specified in the law. If you do not enroll within your initial enrollment period, you may have to pay a higher premium and your coverage will be delayed.

Do you wish to enroll in the supplementary medical insurance benefits plan? (Premium payments will be due. Where possible, these payments will be deducted from your monthly benefit check.)

☐ YES

☐ NO

☐ Undecided

☐ Currently enrolled

Sign below regarding medical insurance benefits plan.

SIGN  
HERE

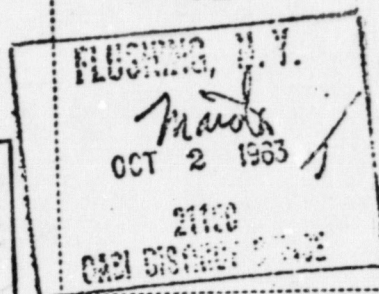
[Signature]



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APPLICATION FOR OLD-AGE INSURANCE BENEFITS

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact for use in determining the right to or the amount of Federal old-age, survivors, or disability insurance benefits or in determining an individual's disability is subject, under the Social Security Act, to not more than a \$1,000 fine or 1 year of imprisonment, or both.



I hereby apply for the insurance benefits payable to me under Title II of the Social Security Act, as amended.

Name (As shown on your Social Security Account Number Card)

Social Security Account Number

May Rosenberg

089-01-9395

1. Give your date of birth: (show month, day and year)

Dec 31, 1898

Name your place of birth (Write name of State or foreign country)

New York City

2. (a) Check one of the following:

Are you now:



MARRIED  
(living together  
or separated)



SINGLE



DIVORCED



WIDOWED

(If you checked "MARRIED," complete (b). If any other block is checked, go on to Item 3.)

(b) ENTER YOUR WIFE'S MAIDEN NAME  
OR YOUR HUSBAND'S NAME

DATE  
OF BIRTH  
(If "Unknown,"  
give age)

DATE  
OF MARRIAGE

WIFE'S OR HUSBAND'S  
SOCIAL SECURITY ACCOUNT NUMBER

Frieda Selberstein 56

abt  
30 4/10  
age

None

089-01-9395

3. (a) How many children do you have under age 19?

None

SHOW NUMBER (if none, show  
"None.")

None

(b) How many children do you have who have been continuously disabled since before  
age 18?

SHOW NUMBER (if none, show  
"None.")

None

4. Have you ever filed an application for monthly social security benefits before?



Yes



No

If "Yes," give the following information about the person on whose earnings record you filed

Name of wage earner or self-employed person

Social Security Account Number

EXHIBIT NO.

2

PI

5. (a) Are you unable to work because of a disabling condition?

☒ Yes

☐ No

62

If "Yes," give the following:

(b) Did the condition begin at least 6 months before age 65?

☐ Yes

☐ No

6. (a) Were you in the active military or naval service of the United States after September 7, 1939?

☒ Yes

☐ No

If "Yes," answer (b) and (c). If "No," omit (b), (c) and (d) and go on to Item 7.

(b) Give Branch and dates of service.

(c) Have you received, or do you expect to receive, a benefit from any other Federal agency?

☒ Yes

☐ No

If "Yes," answer (d).

(d) List all such agencies:

7. Did you work in the railroad industry any time on or after January 1, 1937?

☐ Yes

☒ No

8. • Give the names and addresses of all the persons, companies or government agencies for whom you worked during the last 12 months.
- If you worked in agricultural employment, give this information for this year and the year before.
- If you worked for yourself, write "Self," and show the kind of trade or business in which you engaged. Give this information for last year and the year before last.

NAME AND ADDRESS OF EMPLOYER  
(If you need more room to list all of your employers, use the  
"REMARKS" space on page 4.)

WORK BEGAN

WORK ENDED

MONTH

YEAR

MONTH

YEAR

T. Frederick Jackson Co.  
Long Island City N. Y.

abt 6 yrs  
ago

still  
working

9. May we ask your employers for a report of wages if we need this information to process your claim?

☒ Yes

☐ No

10. If you were self-employed last year, were your net earnings from your trade or business \$400 or more?

☐ Yes

☐ No

11. If you were self-employed in the year before last, were your net earnings from your trade or business \$400 or more?

EXHIBIT NO. 2

☐ Yes

☐ No



Some or all of your benefits are not payable if, while under 72, you work for more than \$100 a month in employment or render substantial services in self-employment in any month, and have earnings in excess of \$1,200 for the taxable year.\* This applies to all employment and self-employment, whether or not covered by the Social Security Act.

		EARNINGS
12.	(a) What were your total earnings last year?	\$ 10,000
	(b) About how much have you earned so far this year?	\$ 7,000
	(c) How much do you expect your total earnings to be this year? (Consider all of your earnings beginning with the 1st month of this year.)	\$ 10,000
13.	(a) Are you now working as an employee for more than \$100 a month?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	(b) Are you rendering substantial services in self-employment?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	(c) Did you earn more than \$100 in employment or render substantial services in self-employment in all of the last 13 months counting the present month?	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If "No," list each month in which you did not earn more than \$100 in employment and did not render substantial services in self-employment. If you were self-employed, show the number of hours you devoted to self-employment opposite each month listed—if none, show "None."
	(d) Do you expect to earn more than \$100 a month in employment or render substantial services in self-employment in all of the next 3 months?	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If "No," list each month in which you will not earn more than \$100 in employment and will not render substantial services in self-employment. If you are self-employed, show the number of hours you will devote to self-employment opposite each month listed—if none, show "None."

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which you earned more than \$1,200, if you were under age 72 at least one full month of that year and received some benefit payment for such a month. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ADDITIONAL MONTHLY BENEFITS.

14.	Do you agree to file the annual report of earnings when required?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
-----	---	---

Any benefits you receive for months before age 65 will be payable at a reduced rate and will continue at a reduced rate even after you reach age 65. The amount of the reduction is  $\frac{1}{3}$  of 1% times the number of months from the start of your benefits to the month you reach age 65. In figuring this reduction, all months of entitlement before age 65 for which you claim benefits will be included though the amount of the reduction may be adjusted at age 65.

15.	If you are now under age 66, check one of the following:	
	(a) I want benefits for all the past 12 months in which I was at least age 62	<input type="checkbox"/>
	OR	
	(b) I want benefits beginning only with the month I reached or will reach age 65 (this applies where you are now age 65 or will be age 65 in 3 months)	<input checked="" type="checkbox"/>
	OR	
	(c) I want benefits for months before age 65 (in which I was at least age 62) beginning with the month of:	<input type="checkbox"/>
	(Specify month and year)	EXHIBIT NO. 2

\*The yearly period referred to in this and following items is the same 12-month period you use in figuring your income tax. If you use a fiscal year (one that does not end December 31), enter here the month your fiscal year ends

MONTH

(OVER)

Answer question 16 only if you are married and your husband or wife is applying for benefits.

16. (a) Indicate by (x) whether your marriage was performed by:

☐ Clergyman or authorized public official☐ Other (Explain)

(b) Were you married before your present marriage?

 ☐ Yes

☐ No

If "Yes," give the following about each of your previous marriages:

1ST MARRIAGE	TO WHOM MARRIED	WHEN	WHERE
	HOW MARRIAGE ENDED	WHEN	WHERE
2ND MARRIAGE	TO WHOM MARRIED	WHEN	WHERE
	HOW MARRIAGE ENDED	WHEN	WHERE
3RD MARRIAGE	TO WHOM MARRIED	WHEN	WHERE
	HOW MARRIAGE ENDED	WHEN	WHERE

(USE REMARKS SPACE FOR INFORMATION ABOUT ANY OTHER PREVIOUS MARRIAGE)

(USE REMARKS SPACE FOR INFORMATION ABOUT ANY OTHER PREVIOUS MARRIAGE)

Answer question 17 only if you are a married woman.

17. Is your husband receiving at least one-half of his support from you?

☐ Yes☐ No

REMARKS:

REMARKS: I will not be for her when I get to  
retire. I have no definite plan. I believe  
I will earn over \$1200 in 1964. I am unable  
to estimate the exact amount. Do not see a

Knowing that anyone making a false statement or representation of a material fact for use in determining the right to or the amount of Federal old-age, survivors, or disability insurance benefits or in determining an individual's disability, commits a crime punishable under Federal law, I certify that the above statements are true.

If this application has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.

SIGNATURE (Write in ink)

1. NAME

## SIGN

**HERE**

ADDRESS (Street number, City, Zone and State)

MAILING ADDRESS (P.O. Box, No. and Street Address)

**2. NAME**

CITY, ZONE, STATE

ADDRESS (Street number, City, Zone and State)

DATE (Mo., Day, and Year),

TELEPHONE NO. (If none available,  
write "None.")

EXHIBIT NO.

ENTER NAME OF COUNTY (if any) IN WHICH YOU NOW LIVE



Form 89-5  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE

U. S. SOCIAL SECURITY ACT  
APPLICATION FOR ACCOUNT NUMBER

089-01-9395

EMPLOYEE NAME

MAX

ROSENBERG

1. 1053 FALLER ST. (STREET AND NUMBER) 2. (MIDDLE NAME) 3. BRONX (CITY) 4. N.Y. 251 (STATE)

5. GENERAL OUTDOOR ADV. (BUSINESS NAME OF PRESENT EMPLOYER) 6. 150 ST + GERARD AVE BX (BUSINESS ADDRESS OF PRESENT EMPLOYER) 7. NEW YORK CITY (PLACE OF BIRTH)

8. 37 (AGE AT LAST BIRTHDAY) 9. 11-20-1898 (DATE OF BIRTH: (MONTH) (DAY) (YEAR)) 10. SARAH GOLOMB (MOTHER'S FULL MAIDEN NAME)

11. JACOB ROSENBERG (FATHER'S FULL NAME) 12. SEX: MALE ☒ FEMALE ☐ 13. COLOR: WHITE ☒ NEGRO ☐ OTHER ☐ (CHECK (X) WHICH) (SPECIFY)

14. IF REGISTERED WITH THE U. S. EMPLOYMENT SERVICE, GIVE NUMBER OF REGISTRATION CARD

15. IF YOU HAVE PREVIOUSLY FILLED OUT A CARD LIKE THIS, STATE (PLACE) (DATE) 1-1

16. 12-5-56 (DATE SIGNED) 17. Max Rosenberg (EMPLOYEE'S SIGNATURE AS USUALLY WRITTEN) EXHIBIT NO. 3

DETACH ALONG THIS LINE

DETERMINATION OF AWARD

(The terms below are used as defined  
in Title II of the Social Security Act  
or are used pursuant thereto.)

S 3E34062

66

ACCOUNT NUMBER OF INSURED INDIVIDUAL

089-01-9395

INSURED INDIVIDUAL <b>MAX ROSENBERG</b>				AGE X	W X	N X	O X	DATE OF BIRTH <b>12/31/98</b>	DATE OF DEATH	DATE CLAIM FILED <b>12/1/63</b>
2. REQUIRED QTRS. <b>12</b>	HAS AT LEAST <b>40</b>	CURRENT QTRS.	3. FIRST BASE YR. OR STARTING DATE <b>1951</b>		LAST BASE YR. OR CLOSING DATE <b>1963</b>		4. LUMP SUM AMOUNT			
5. DIVIDEND <b>32400.00</b>		DISABILITY YEARS EXCLUDED		EL. YRS./DO. YRS. <b>51-62</b>		DIVISOR <b>84</b>	INCREMENTS	PRIMARY AMOUNT <b>124.00</b>		
6. SYMBOL	NAME	DATE OF BIRTH	DATE CLAIM FILED	ORIGINAL BENEFIT	ANY OTHER BENEFITS	ADJUSTED BENEFIT	RELATIVE'S ACCOUNT NUMBER (IF ANY)			
8. REIMBURSABLE F. H. EXPENSES ARE		PAID AS FOLLOWS				REMAINS UNPAID		7. MAXIMUM PAYABLE		

11. REMARKS

D.O. CODE

150

Flushing N Y 11354

5 0 WOODY DEO

12. CERTIFICATION OF PAYMENT		DATE OF ENTITLEMENT TO MONTHLY BENEFITS	MONTHLY BENEFIT	LUMP-SUM DEATH PAYMENT
SYMBOL <b>A</b> <b>91</b>	NAME AND ADDRESS OF PAYEE AS THE CLAIMANT OR AS REPRESENTATIVE OF THE CLAIMANT <b>MAX ROSENBERG</b> <b>67 47 161 St</b> <b>Flushing N Y 11365</b>	<b>12/63</b> <b>WK 12/63 ON</b>	<b>124.00</b>	
		EXHIBIT NO. <b>4</b>		

Pursuant to lawfully delegated authority, I certify that, on application by or on behalf of the claimant(s) named above as payee(s) and the supporting evidence forwarded herewith, the foregoing statements are my determination of fact and decisions as to benefit(s) to be paid as indicated.

I certify that pursuant to lawfully delegated authority I have verified the above statements with the supporting evidence on file in this office; that I have computed all amounts and that same are correct as shown; and that all indicated benefit(s) are in accordance with the provisions of Title II of the Social Security Act, as amended.

SIGNATURE OF CLAIMS REPRESENTATIVE

DATE  
**10/8/63** BY  
**Solomon**

SIGNATURE OF CLAIMS AUTHORIZER

DATE





## HUSBAND'S CERTIFICATION

67

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

HUSBAND'S NAME

MAX ROSENBERG

SOCIAL SECURITY NUMBER

089-01-9395A

I am the husband of the person named below, who as my wife has applied for insurance benefits under Title II of the Social Security Act, as amended.

NAME OF WIFE

(First name)

(Maiden name)

(Husband's last name)

FRIEDA SILVERSTEIN ROSENBERG

1. Indicate whether your present marriage was performed by:

☒ Clergyman or authorized public official☐ Other (Explain) \_\_\_\_\_

2. Were you married before your present marriage?

☒ Yes☐ No

If "Yes," give the following information about each of your previous marriages:

	TO WHOM MARRIED	WHEN (Show Mo., Day and Year)	WHERE (Write name of city and state)
PREVIOUS MARRIAGE	CELIA	1918	NYC NY
	HOW MARRIAGE ENDED	WHEN (Show Mo., Day and Year)	WHERE (Write name of city and state)
	DIVORCED	1933	Mexico
PREVIOUS MARRIAGE	TO WHOM MARRIED	WHEN (Show Mo., Day and Year)	WHERE (Write name of city and state)
	I filed		
	HOW MARRIAGE ENDED	WHEN (Show Mo., Day and Year)	WHERE (Write name of city and state)

(Use remarks space and the back of this form, if needed, for information about any other previous marriage)

REMARKS:

I live at 292 North Main St, Spring Valley, N.Y. been married 11 years (at 1st marriage).

I live with my sister. My wife & I want separate checks.

Knowing that anyone making a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

If this statement has been signed by mark (X), two witnesses who know the husband must sign below, giving their full addresses.

1. NAME

ADDRESS (Street number, City, State and ZIP Code)

2. NAME

ADDRESS (Street number, City, State and ZIP Code)

SIGNATURE OF HUSBAND (Write in ink—First, Middle Initial, Last Name)

EXHIBIT NO. 5

MAILING ADDRESS (P.O. Box, No. and street or route)

CITY, STATE AND ZIP CODE

DATE (Mo., Day, and Year)

TELEPHONE NO.

# Certificate of Marriage

THIS IS TO CERTIFY

That on the Twenty Fifth day of October

in the year of our Lord 1905

Walter Rosenberg  
and  
Arlie Blum

WERE BY ME UNITED IN

## Marriage

at Greenwich, Connecticut  
according to the laws of the State of Connecticut

W. S. M. J. O'NEILL  
JUDGE OF THE PEACE

Greenwich, Conn. 10/25/05

EXHIBIT NO. 2







DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72-R442.3.

70

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

*Max Rosenberg*

SOCIAL SECURITY ACCOUNT NUMBER

*089-01-9395A*

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

*I was divorced from my 1<sup>st</sup> wife Celia in Mexico in 1933. I was the plaintiff. I was living at 13 Pitt St New York City at the time. Celia I was living in New York City at the time I filed for the divorce - Celia lived at 13 Pitt St, New York City. I lived elsewhere in the city; I don't recall the exact address. The divorce was mail-order, neither of us actually, received no notice at the time the divorce was issued. Celia was served with notice of the divorce proceedings; I don't know if it was in person or by mail. I don't believe she ever filed an answer or appeared in court. There was no property settlement. I don't think she ever remarried. I no longer have a copy of the divorce.*



Knowing that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.

1. Name

Address (Street number, City, State, and ZIP Code)

2. Name

Address (Street number, City, State, and ZIP Code)

Signature (Write in ink—First, Middle Initial, Last Name)

*James B. [unclear]*

Mailing address (Number and Street, P.O. Box or Rural Route)

City

State

ZIP Code

Date (Mo., Day, and Year)

3/27/64

Telephone No. (If none available, write "None")



DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72-R442.3.

72

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

Mar Rosenberg

SOCIAL SECURITY ACCOUNT NUMBER

089-01-9395 B

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

My husband and I were married in Greenwich Conn, 10/26/35 by a Justice of the Peace.

We were married in Conn. because we were told our marriage would be legal if married in Conn.

My husband and I were living together until he had his first heart attack in 1964. My husband was in the hospital for 6 weeks and came home and returned to work. My husband and I were living together until his second heart attack in 1966. He again went to the hospital for a stay of 3

Form SSA-795 (11-66) (Formerly OA-C795)

(OVER)

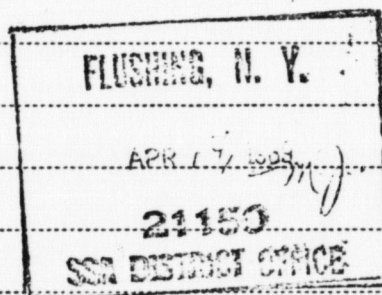
EXHIBIT NO.

9

p1



weeks and then he returned home again. After being home about a month he went to stay with his sister, where it is quiet. Mrs Blumberg 292 N. Main St., Spring Valley, N. Y. I keep our apartment and whenever my husband feels better he comes home for weekends.



Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF PERSON MAKING STATEMENT	
<p>If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.</p> <p>1. Signature</p> <p>Address (Street number, City, State, and ZIP Code)</p> <p>2. Signature</p> <p>Address (Street number, City, State, and ZIP Code)</p> <p>EXHIBIT NO. <u>9</u></p> <p><u>02</u></p>		<p>Signature (Write in ink—First, Middle Initial, Last Name)</p> <p><u>Frieda Rosenberg</u></p> <p>Mailing address (Number and Street, P.O. Box or Rural Route)</p> <p><u>65-91 162 St</u></p> <p>City <u>Flushing</u> State <u>N.Y.</u> ZIP Code <u>11365</u></p> <p>Date (Mo., Day, and Year) <u>4/14/69</u> Telephone No. (If none available, write "None") <u>591-1131</u></p>	



DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72 R442.3.

74

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

*Max Rosenberg*

SOCIAL SECURITY ACCOUNT NUMBER

*089-01-9395*

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

I used the name Fritzie as a nickname for Frieda. Outville is the <sup>last</sup> name of my first husband from whom I was divorced in 1932. We were divorced in New York State. I was the plaintiff. My maiden name was Silberstein.

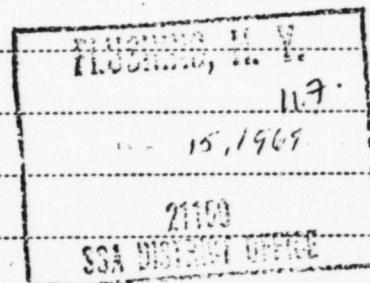
A fire destroyed the divorce papers for both myself & my husband. As far as I know we were both legally divorced before we got married.

I don't know if my first husband is living.

As far as I know our present marriage is valid because as far as I know our previous marriages were completely dissolved before our marriage. I never knew of any restrictions on our marriage because we were both legally divorced.



I saw my husband's divorce papers.  
After they were destroyed we couldn't  
get another copy.



Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF PERSON MAKING STATEMENT	
<p>If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.</p>		<p>Signature (Write in ink—First, Middle Initial, Last Name)</p>	
<p>1. Signature</p>		<p><i>Dr. Fred Rosenberg</i></p>	
<p>Address (Street number, City, State, and ZIP Code)</p>		<p>Mailing address (Number and Street, P.O. Box or Rural Route)</p>	
<p>2. Signature</p>		<p>65-91 162 St.</p>	
<p>Address (Street number, City, State, and ZIP Code)</p>		<p>City State ZIP Code</p>	<p>11365</p>
<p>EXHIBIT NO. <u>10</u></p>		<p>Date (Mo., Day, and Year)</p>	<p>Telephone No. (If none available, write "None")</p>
<p><i>pr</i></p>		<p>4/15/69</p>	<p>591-1135</p>

# REPORT OF CONTACT

(USE INK OR TYPEWRITER)

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

May Rosenberg

PERSON(S) CONTACTED AND ADDRESS(ES):

☐ WF OR SE PERSON

☐ OTHER (Specify)

ACCOUNT NUMBER (and symbol)

089-01-7395

76

CONTACT MADE:

☐ DO

☐ CS

☐ HOME

☐ PHONE

☐ OTHER (Specify)

DATE OF CONTACT

The W/E stated he has never discussed returning to live with his wife, either in NYC or Spring Valley. He stated he has been advised that since he was having marital difficulties he should separate from his wife since he wouldn't be as comfortable.

DO NOT WRITE IN MARGIN

SIGNATURE

DISTRICT OFFICE

Jack J. Rosenberg  
New York

☒ CR

☐ FR

☐ SR

☐ CLAIMS CLERICAL

☐ OTHER (Specify)

EXHIBIT NO.

DATE OF REPORT

5/12/65

PAGE OF





DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72-R142.3.

77

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

Max Rosenberg

SOCIAL SECURITY ACCOUNT NUMBER

089-01-9395

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

I received all my mail in Spring Valley. I sit, 11  
votes in Flushing + consider Flushing my permanent  
home. I go to Flushing about once a month. I  
usually stay only one day. I have been ordered by my  
doctor to stay where it is quiet. I have had 2 coronary  
attacks + was advised to be separated from my wife as we  
were not getting along. I was forced to stop work because  
of the attacks.

Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF PERSON MAKING STATEMENT	
<p>If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.</p>		<p>Signature (Write in ink—First, Middle Initial, Last Name)</p>	
<p>1. Signature</p>		<p><i>Robert R. Rosenberg</i></p>	
<p>Address (Street number, City, State, and ZIP Code)</p>		<p>Mailing address (Number and Street, P.O. Box or Rural Route)</p>	
		<p><i>c/o Blumberg</i></p>	
		<p><i>292 N. Main St</i></p>	
		City	State
		Spring Valley, ny	
		ZIP Code	10977
<p>2. Signature</p>		<p>Date (Mo., Day, and Year)</p>	
<p>Address (Street number, City, State, and ZIP Code)</p>		<p>Telephone No. (If none available, write "None")</p>	
		<p><i>5/12/69</i></p>	
		<p><i>ELL-4139</i></p>	





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
Bureau of Retirement and Survivors Insurance

79

New York, New York

When writing about your claim  
always give Claim No.

089-01-9395

June 6, 1969

Frieda Rosenberg  
65-91 162 St  
Flushing NY 11365

We regret to inform you that you are not entitled to social security benefits as the wife of Max Rosenberg.

To qualify for these benefits, you must meet one of the following requirements: (1) have a legal marriage under the law of the State of the insured's domicile, or (2) have gone through a marriage ceremony in good faith even though the marriage was not valid.

You do not meet the second requirement because it does not apply unless you were living in the same household with your husband at the time your application was filed.

If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make any such request through your social security office. If additional evidence is available, you should submit it with your request. Please read the enclosed leaflet for a full explanation of your right to question the decision made on your claim.

Should you have any questions about your claim, please get in touch with any social security office. If you call in person, please take this notice with you.

Sincerely yours,

*Bernard Levine*

Chief, Claims Authorization Branch

Enclosure:  
SSI-58

EXHIBIT NO. 13

# REPORT OF CONTACT

(USE INK OR TYPEWRITER)

ACCOUNT NUMBER (and symbol)

089-01-9395

REVIEWING OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

TO: NY P BIR CH SF DBS KC DFC SA

80  
May Rosenberg

PERSON(S) CONTACTED AND ADDRESS(ES):

☐ WE OR SE  
PERSON

☐ OTHER  
(Specify)

CONTACT MADE:

☐ DO

☐ BO

☐ CS

☐ HOME

☐ PHONE:

☐ OTHER  
(Specify)

DATE OF CONTACT

SUBJECT:

B called at office re denied notice. Stated that she was not living in same household with husband at time appeal was filed. B states that her husband had a heart attack in 1966. She states that he spends most of his time with his sister, Rose Blumberg, at 292 W Main St, Spring Valley, NY. He is then in his 110's. She states he comes into the city every almost every week & stays with her for one or two days. She states that if he doesn't come then, she goes up there & stays with him.

SIGNATURE

DISTRICT OFFICE

Edward A. She  
She

☒ CR

☐ FR

☐ SR

☐ CLAIMS  
CLERICAL

☐ OTHER (Specify)

EXHIBIT NO.

14

DATE OF REPORT

6/12/69

PAGE OF

DO NOT WRITE IN MARGIN





DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72-R442.3.

81

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

Max Rosenberg

SOCIAL SECURITY ACCOUNT NUMBER

1089-01-9395

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

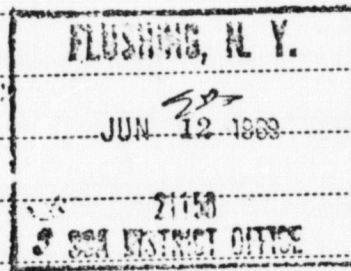
Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

My husband and I are not separated. In 1966, he suffered a heart attack, and from that time on he has spent most of his time at Spring Valley, NY, with his sister. He went up there in 1966 & stayed for about 2 months & then came back to the city & lived at home with me. But he found he didn't feel well, so he returned up state. He comes home usually once per week & stays for a day or two. When he doesn't come down, I go up to him. Last summer we spent the entire summer together at Rockaway Beach. We stayed at 144 B 3rd St. I do not know if we'll be going again this summer, but...

\* Freda Rosenberg

My husband was married  
 previously & obtained a Mexican  
 divorce. The papers have been  
 destroyed & no D.O. can be  
 obtained. I have always felt the  
 divorce was valid. If it invalid-  
 iness to our marriage does exist,  
 we are not aware of it & married  
 in good faith.

When my husband comes to the  
 city, I will have him come to the  
 office.



Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF PERSON MAKING STATEMENT	
<p>If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.</p> <p>1. Signature</p> <p>Address (Street number, City, State, and ZIP Code)</p> <p>2. Signature</p> <p>Address (Street number, City, State, and ZIP Code)</p>		<p>Signature (Write in ink—First, Middle Initial, Last Name)</p> <p><i>Fredy Rosenberg</i></p> <p>Mailing address (Number and Street, P.O. Box or Rural Route)</p> <p>City State ZIP Code</p> <p>Date (Mo., Day, and Year) Telephone No. (If none available, write "None")</p>	
<p>EXHIBIT NO. 15</p>			

pr





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form Approved.  
Budget Bureau No. 72-R0552

REQUEST FOR RECONSIDERATION

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON MAX ROSENBERG SOCIAL SECURITY CLAIM NUMBER 089-01-9325

NAME OF CLAIMANT

FRIEDA ROSENBERG

CLAIM FOR (Specify type, e.g., retirement, disability, hospital insurance, etc.)

Wife's Benefits NY JUL 11 1969

FLUSHING, N. Y.

83

JUN 12 1969

21150

SSA DISTRICT OFFICE

I do not agree with the determination made on the above claim and request reconsideration.

My reasons are: My husband & I are not separated  
the only reason we are apart at certain  
times because of his health. I have not  
moved up state because I have a  
co-op apartment (in his name) & I am near  
my children & grand children.

NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.

I am submitting the following additional evidence (If none, write "None."):

SIGNATURE OF WITNESSES ONLY		SIGNATURE (Write in Ink—First, Middle Initial, Last Name)	
If this request has been signed by Mark (A), two witnesses who know the person requesting reconsideration must sign below, giving their full addresses.			
1. NAME		<u>Frieda Rosenberg</u>	
ADDRESS (Number and Street, City, State and Zip Code)		MAILING ADDRESS (Number and Street, P.O. Box or Route)	
		<u>65-91 162 ST.</u>	
2. NAME		CITY AND STATE	
		<u>FLUSHING NY</u>	
ADDRESS (Number and Street, City, State and Zip Code)		DATE (Month, Day, and Year)	TELEPHONE NUMBER
		<u>6/12/69</u>	<u>591-1135</u>

FOR SOCIAL SECURITY OFFICE USE ONLY

PROVIDER NAME AND NUMBER	INTERMEDIARY NAME AND NUMBER	SOCIAL SECURITY OFFICE ADDRESS

ROUTING  
INSTRUCTIONS  
(Check one)

- ☐ State Agency (Route with disability folder)  
☐ Payment Center \_\_\_\_\_ BDI, Balto. ☐  
☐ BHI, RO \_\_\_\_\_ ☐ BHI, Attn: DRB, Balto.

- ☐ Division of Foreign Claims, Balto.  
☐ BDPA, Attn: CWAB, Balto.  
☐ Inter-EXHIBIT NO. 16

FORM SSA-561 (8-68)

NOTE: Take or mail completed copies to your Social Security Office.

# REPORT OF CONTACT

(USE INK OR TYPEWRITER)

ACCOUNT NUMBER (and symbol)

089-01-9395 84

REVIEWING OFFICE

TO: NY P BIR CH SF DBS KC DFC SA

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

May Rosenberg

PERSON(S) CONTACTED AND ADDRESS(ES):

☐ WE OR SE PERSON

☐ OTHER (Specify)

CONTACT MADE:

☐ DO ☐ BO ☐ CS ☐ HOME ☐ PHONE:

☐ OTHER (Specify)

DATE OF CONTACT

7/9/69

SUBJECT:

B cog + stated that her husband is very upset with the whole matter of questioning their living together. She told me that he refuses to come to the office or send in a statement. On 5/04/69 shows that an MIC was submitted. It is known that we may not accept the validity of a statement without documented evidence, but WFE's claim will be remanded & the marriage was recognized as valid in the state where they were married, & per CM 2/18/69, it is valid in New York. It is noted that SSA 3 filed on 5/22/69. If reconsideration is denied, request client be sent reasoning as she wishes to present it to Sullivan. B insists that when she WFE called at office to file SSA 3, he made statement of 4/69.

SIGNATURE

[Signature]

DISTRICT OFFICE

[Signature]

☒ CR

☐ EX

EXHIBIT NO.

SR

☒ CLAIMS

CLERICAL

☐ OTHER (Specify)

DATE OF REPORT

7/9/69

PAGE OF

DO NOT WRITE IN MARGIN



The original document, of which this is a photocopy, appears to be genuine and undisturbed and to have been made at the time presented.

SHELDON ROSENBLATT

ATTORNEY AT LAW

GRANITE 1-5205

Signature Josh J. Rosenblatt

Date 9/9/69

Title CA 1931 MOTT AVENUE  
FAR ROCKAWAY, NEW YORK 11691

August 25, 1969

Mr. Max Rosenberg  
c/o M. Blumberg  
292 North Main Street  
Spring Valley, New York

Mrs. Max Rosenberg  
65-91 162nd Street  
Flushing, New York 11365

Re: Arverne II Urban Renewal  
144 Beach 33 Street, Edgemere

Dear Mr. and Mrs. Rosenberg:

I am in possession of Option Agreements between you and The City of New York for the sale of the above property in the sum of \$22,200.00.

These option agreements must be signed by both of you. Please call my office to make an appointment to come in to sign as soon as possible.

I am missing the following bills:

1965/66 Real Estate Tax Bill for Block 15859, Lot 22  
1969/70 Real Estate Tax Bill for Block 15859, Lot 22

Meter No. 5002, Meter Charge and Sewer Rent since 8/21/68

If you have the above bills, please mail them to my office immediately. If you are missing any, please go to the Office of City Collector, Borough Hall, 120-55 Queens Boulevard, Kew Gardens and obtain copies of the missing bills.

Please take care of the above as soon as possible.

Very truly yours,

Sheldon Rosenblatt  
SHELDON ROSENBLATT

SR:bf

EXHIBIT NO. 1.8  
87

SIDNEY LEVINE

*Public Adjuster*

86

26 COURT STREET  
BROOKLYN, N. Y. 11201

TELEPHONE: 875-7167

January 28, 1969

Max & Frieda Rosenberg  
144 Beach 33rd Street  
Edgemere, Queens, N.Y.

Re: Fire Loss: 10/29/68

Dear Mr. & Mrs. Rosenberg:

Enclosed please find proofs of loss. Kindly  
sign same in the presence of a Notary Public and return to me.

Cordially,

*Sidney Levine*  
SIDNEY LEVINE

SL:ds

The original document, of which this is  
a photocopy, appears to be genuine and  
unaltered and to have been made at the  
time purported.

Signature

*Joseph J. Smith*

Date

*9/7/69*

Title

*CR*

EXHIBIT NO.

*18*

*P-8*





DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72-R442.3.

87

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

Max Rosenberg

SOCIAL SECURITY ACCOUNT NUMBER

089-01-9395

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

We always spent May - Sept of each year at the Rockaways. The last time we were there was the summer of 1968. I owned the boarding house in which we stayed. The house burned down 10/29/68. We did not go there in 1969. I continue to pay the rent for the apartment at 65-91-144th Flushing. I also pay my wife's health insurance through the Electrical Welfare club in my union. I had been working long hours some time 6 + 7 days a week. After my second coronary in Oct 66 I was advised to stop work. I was also told not to be aggravated + remain calm. I could not stand being at home because my wife continually berated me. It was a simple case of not being able to adjust to a forced retirement. I didn't know what to do with myself + my wife's berating me daily. This is when the doctor advised me to go away + relax. There is no serious marital problem just a case of me being bitter off with my sister. Everybody considers us as man + wife. As you can see from the attached copy of the letter,

Form SSA-795 (11-68) (Formerly OA C795)

(OVER)

EXHIBIT NO. 18

PI

We considered ourselves man + wife in Jan 1969 + at 11  
 do in Aug 69 + at present. Every body who knows us  
 consid us as man + wife

Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF PERSON MAKING STATEMENT	
<p>If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.</p>		<p>Signature (Write in ink—First, Middle Initial, Last Name)</p>	
<p>1. Signature</p>		<p><i>Y. H. J. P. B. L. B. G.</i></p>	
<p>Address (Street number, City, State, and ZIP Code)</p>		<p>Mailing address (Number and Street, P.O. Box or Rural Route)</p>	
		<p>60 M. Blumberg</p>	
		<p>292 N. Main St</p>	
<p>2. Signature</p>		<p>City</p>	<p>State</p>
		<p>Spring Valley, ny</p>	<p>10977</p>
<p>Address (Street number, City, State, and ZIP Code)</p>		<p>Date (Mo., Day, and Year)</p>	<p>Telephone No. (If none available, write "None")</p>
		<p>9/9/69</p>	

EXHIBIT NO. 18

pr



For Fredrick  
Way Brantley  
Blue Cross

MAINE MIDLAND GRACE  
TRUST CO. OF NEW YORK  
NEW YORK, N. Y.  
RECEIVED  
JUN 23 1961

ELECTRICAL WELFARE  
CLUB INC.

89

### IMPORTANT

You are permanently registered as long as you live at your present address and vote at least once at any General Election held within two calendar years.

If you move from your present address you must re-register in order to be eligible to vote.

The original document is in  
a photocopy of the original and  
unaltered and to have been true at the  
time purported. 2 pages

Signature

*Jack J. Smith*

Date

9/9/61

Title

CS

EXHIBIT NO.

18  
P 3

Rockland National Bank

No. 44

SUFFERN, N.Y.

19 68 50-872

213

PAY TO THE  
ORDER OF

*Electrical Work*

**PAID**

\$ 57

DOLLARS

MAX ROSENBERG

ROCKLAND NATIONAL BANK

JAN 4 1969

NEW CITY NEW YORK

00213008720

04700586300

0000005744

BOARD OF ELECTIONS IN THE CITY OF NEW YORK

QUEENS COUNTY

SERIAL No. 1144380

*Max Rosenberg*

NAME

65-91-162nd St.

ADDRESS

REGISTERED ON October 10 1966

IN THE 34 E.D. 24 A.D.

JAMES M. POWER  
THOMAS MALLEE  
MAURICE J. O'ROURKE  
J. J. DUBERSTEIN

BY *Lillian Gold*  
INSPECTOR OF ELECTION

COMMISSIONERS OF ELECTIONS

LINE 144-(68)

EXHIBIT NO. 18

p 4 See Reverse



The original document, of which this is a photocopy, appears to be genuine and unaltered and to have been made at the time purported. 2 pages

Signature Jack Jones  
Date 9/19/69 Title C.R.

*Building #90*  
*apt 1R*

53 PAY TO THE ORDER OF 53  
FRANKLIN NATIONAL BANK  
SECOND HOUSING CO. INC.  
053 01030-2

634 PAY ANY BANK  
FRANKLIN NATIONAL BANK  
121 E. 57th St.  
NEW YORK, N.Y. 10022

JAN 19 69 053 761/1

NOV 12 1968

*Building #9*  
*apt 1R*

53 PAY TO THE ORDER OF 53  
FRANKLIN NATIONAL BANK  
SECOND HOUSING CO. INC.  
053 01030-2

634 PAY ANY BANK  
FRANKLIN NATIONAL BANK  
121 E. 57th St.  
NEW YORK, N.Y. 10022

JAN 17 69 053 7782

JAN 21 1969

**ELECTCHES**  
**SECOND HOUSING CO., Inc.**

161-29 JEWEL AVENUE  
 FLUSHING 65, N. Y.  
 BUILDING #1

TEL. 591-0330

MAR 1969

92

Please return this stub with your payment.

When paying in person, please present both bill and stub.

Rent due in advance by the 5th of the month  
 Max Rosenberg Cryg. Ch'gs 70.00  
 65-91 162nd St., Garage 12.00  
 Flushing, N. Y.  
 Bldg. #9 - Apt. 1K Total 82.00

Received Payment ..... by .....



Keep up to date -- Attend building meetings

CHECK	
M. O.	

**Rockland National Bank**

SUFFERN, N.Y.

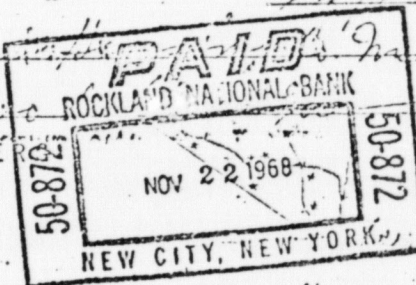
No. 36

50-872  
213

1968

PAY TO THE  
 ORDER OF

*Eighty Two*  
 MAX ROSENBERG



\$ 82.00

DOLLARS

⑆0213⑆0872⑆

047⑆5863⑆3⑆

⑈0000008200⑈

**Rockland National Bank**

SUFFERN, N.Y.

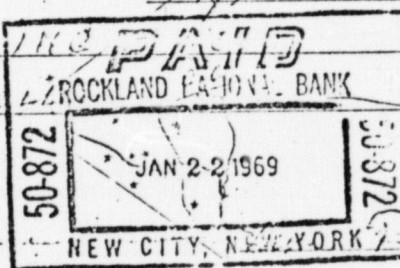
No. 43

50-872  
213

1969

PAY TO THE  
 ORDER OF

*2nd Housing*  
*EIGHTY TWO DOLLARS*  
 MAX ROSENBERG



\$ 82.00

DOLLARS

⑆0213⑆0872⑆

047⑆5863⑆3⑆

⑈0000008200⑈

EXHIBIT NO.

*18*  
*pl*

*See Reverse*





DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

Form approved.  
Budget Bureau No. 72-R442.3.

93

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

*Max Rosenberg*

SOCIAL SECURITY ACCOUNT NUMBER

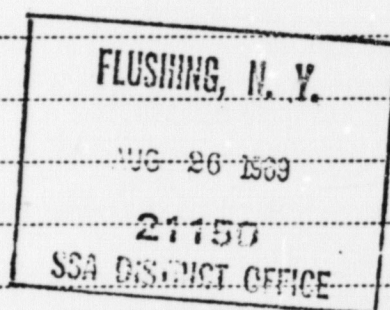
*089-01-9395*

NOTICE.—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a \$1,000 fine or 1 year of imprisonment, or both.

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

*I had thought that I had told the interviewer when I applied for wife's ben. <sup>that</sup> I had been married prior to Mr. Rosenberg. When I signed the application I did not notice that she had listed "no prior marriages."*

*My first husband's name was Herbert Butville. We were married in 1929 in the Bronx, N.Y. The marriage ended in divorce in 1932 in N.Y. I was the plaintiff - the charge was adultery. My divorce papers were destroyed in a fire.*



Knowing that anyone making a false statement or representation of a material fact in an application or for use determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

SIGNATURE OF WITNESSES		SIGNATURE OF PERSON MAKING STATEMENT	
<p>If this statement has been signed by mark (X), two witnesses who know the person making this statement must sign below, giving their full addresses.</p> <p>1. Signature</p> <p>Address (Street number, City, State, and ZIP Code)</p> <p>2. Signature</p> <p>Address (Street number, City, State, and ZIP Code)</p>		<p>Signature (Write in ink—First, Middle Initial, Last Name)</p> <p><i>Mrs. Frieda Rosenberg</i></p> <p>Mailing address (Number and Street, P.O. Box or Rural Route)</p> <p>City State ZIP Code</p> <p>Date (Mo., Day, and Year) Telephone No. (If none available, write "None")</p>	



# REPORT OF CONTACT

(USE INK OR TYPEWRITER)

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

95

M. Rosenberg

PERSON(S) CONTACTED AND ADDRESSES:

☐ WE OR SE PERSON

☐ OTHER (Specify)

ACCOUNT NUMBER (and symbol)

089-01-9395

% Blumberg 292 N. Main St, Spring Valley, NY

CONTACT MADE:

☐ DO ☐ CS ☐ HOME ☒ PHONE:

☐ OTHER (Specify)

DATE OF CONTACT

We attempted to have Rose Blumberg c/o at a time different from that of which we were able to obtain a statement from her in this matter. The U.S. Marshal on 9/9/69 was very upset about returning to discuss the matter of living with his wife. He did however bring with him documents that showed they were still considered husband & wife. I did not mention who would be getting in contact with his sister. On 9/10/69 we sent a note to Mrs. Blumberg. On 9/15/69 a neighbor of the Blumberg's called & stated that the Blumberg's had left sometime with her & that they would be away on vacation for a long time & couldn't c/o. A telephone call to the Blumberg residence received no answer. Neighbor who called did not volunteer & would not state when Blumberg's had gone or approximately when they would return.

DO NOT WRITE IN MARGIN

SIGNATURE

DISTRICT OFFICE

New C. T. NY

☒ CR

☐ FR

☐ SR

☒ CLAIMS CLERICAL

EXHIBIT NO. 20

☐ OTHER (Specify)

DATE OF REPORT

9/15/69

PAGE OF

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION

96

RECONSIDERATION DETERMINATION

PAYMENT CENTER Office of the Regional Representative (Retirement & Survivors) New York		DISTRICT OFFICE 136-59 37th Avenue Flushing, New York
NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON Max Rosenberg		SOCIAL SECURITY ACCOUNT NO. 089-01-9395
NAME OF CLAIMANT Frieda Rosenberg		TYPE OF CLAIM Wife's Insurance Benefits
DETERMINATION:		

Frieda Rosenberg filed an application for wife's insurance benefits on January 8, 1969. This claim was disallowed because it was determined that the claimant was not the wife of Max Rosenberg within the meaning of the Social Security Act. She was notified of this determination on June 6, 1969. Mrs. Rosenberg requested reconsideration on June 12, 1969.

The question to be decided is whether the claimant is entitled to wife's insurance benefits. This depends upon whether she is living in the same household as the wage-earner.

Section 202(b) of the Social Security Act provides for the payment of monthly benefits to the qualified wife of an insured individual.

Section 216(h)(1)(A) of the Act states that an applicant is the wife of an insured individual if the courts of the State in which he was domiciled at the time the applicant files her application would find that either:

1. the insured individual and she were validly married at the time, or
2. she would have the same status as a wife for the purpose of sharing in his personal property if he died without leaving a will.

An applicant who does not meet either of these requirements but in good faith went through a marriage ceremony with the wage-earner and is living with him at the time she files her application may in certain circumstances qualify as the wife of the wage-earner under Section 216(h)(1)(B) of the Act.

EXHIBIT NO. 21

P1



Max Rosenberg

089-01-9395

Section 404.1112 of the Regulations of the Social Security Administration states that a husband and wife are living in the same household if they customarily lived together as husband and wife in the same place of abode. The temporary absence of one spouse from such place of abode does not preclude a finding that they were living in the same household. A finding of temporary absence would not be justified where the parties had ceased to live in the same place of abode because of marital difficulties.

The claimant lives at 65-91 162 Street, Flushing, New York. On her application for benefits Mrs. Rosenberg stated that she married the wage earner on April 26, 1935 in Greenwich, Connecticut.

Max Rosenberg lives with his sister at 292 North Main Street, Spring Valley, New York. He stated that he was married prior to his marriage to the claimant and that this marriage ended by divorce in 1933. Mr. Rosenberg stated that the divorce took place in Mexico; that he was the plaintiff; that he and his first wife were both living in New York at the time he filed for divorce; that the divorce was of the mail order variety; that his first wife was served with notice of divorce either in person or by mail.

The claimant stated that as far as she knew her marriage to the wage earner was valid because his previous marriage was dissolved before she married him. She also stated that she and her husband lived together until his second heart attack in 1966. After that time he went to stay with his sister in Spring Valley because he needed quiet.

Mr. Rosenberg stated "I receive all my mail in Spring Valley. I still vote in Flushing and consider Flushing my permanent home. I go to Flushing about once a month. I usually stay only one day. I have been ordered by my doctor to stay where it is quiet. I have had 2 coronary attacks and was advised to be separated from my wife as we were not getting along."

On her request for reconsideration the claimant indicated that the only reason for her separation from the wage-earner was the ill health of Mr. Rosenberg which requires him to stay in a quiet place.

Mr. Rosenberg was asked to give a full explanation of the causes of his separation from his wife. He stated that he always spent May through September in the Rockaways with his wife; that the last time he was in

EXHIBIT NO. 21  
PY

Max Rosenberg

089-01-9395

Rockaway was the summer of 1968; that he did not go there in 1969 because the house had burned down; that he pays the rent for the apartment in Flushing; that he pays his wife's health insurance. He also stated "After my second coronary in October 1966, I was advised to stop work. I was also told not to be aggravated and remain calm. I could not stand being at home because my wife continually pestered me. It was a simple case of not being able to adjust to a forced retirement. I didn't know what to do with myself and my wife's pestering me didn't help. This is when the doctor advised me to go away and relax. There is no serious marital problem, just a case of me being better off with my sister."

New York State, the place of the wage-earner's domicile would not recognize the validity of the wage-earner's divorce from his first wife. This is because neither the wage-earner or his first wife were domiciliaries of Mexico at the time the divorce was obtained. Since the divorce is not recognized by New York, Mr. Rosenberg could not have entered into a valid marriage with the claimant. However, the claimant could still qualify for wife's insurance benefits under Section 216(h)(1)(B) of the Act if it can be established that she was living with the wage-earner. [The evidence submitted and the statements of Mr. Rosenberg indicate that the separation was not a temporary one and that ill health of the wage-earner was not the only reason for the separation. The separation was due to a generally inharmonious relationship between the claimant and her husband. Mrs. Rosenberg was not living with her husband at the time she filed her application for wife's insurance benefits and thus cannot qualify as the wife of the wage-earner within the meaning of Section 216(h)(1)(B) of the Social Security Act.]

Upon reconsideration, therefore, the determination is affirmed.

Joseph Abramowitz  
Chief, Reconsideration Branch

October 14, 1969

EXHIBIT NO.

21

P3





COPY

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
Bureau of Retirement and Survivors Insurance

99

New York, New York

When writing about your claim  
always give Claim No.

089-01-9395

October 14, 1969

Mrs. Frieda Rosenberg  
65-91 162 Street  
Flushing, New York 11365

Dear Mrs. Rosenberg:

As you requested, your claim has been reconsidered. It has been found that the original decision was correct and in accordance with the law and regulations. The enclosed Reconsideration Determination fully explains the decision reached.

This reconsideration was made by a member of a specially designated staff, different from the staff that made the original decision, and specially trained in the handling of reconsiderations. This staff made an independent and thorough examination of all the evidence on record about your claim.

If you believe that the Reconsideration Determination is not correct, you may request a hearing before a hearing examiner of the Bureau of Hearings and Appeals. If you want a hearing you must request it not later than 6 months from the date of this notice. You should make any such request through your social security office. Please read the enclosed leaflet for a full explanation of your right to appeal.

Sincerely yours,

*John A. McConnachie*  
John A. McConnachie  
Regional Representative  
Retirement and Survivors Insurance

Enclosures:  
Form OA-C662  
Form BHA-1

EXHIBIT NO. 28

REGISTRATION INFORMATION REQUEST		PRINT OR TYPE ALL INFORMATION YOU HAVE.	
<small>FEE OF 50 CENTS (DO NOT SEND CASH) FOR EACH SEARCH.</small>		<small>CHECK INFORMATION REQUESTED.</small>	
<input type="checkbox"/> NAME <input type="checkbox"/> ADDRESS <input type="checkbox"/> MOTORIST IDENT. NO. <input type="checkbox"/> DATE OF BIRTH	<div style="font-family: cursive; font-size: 1.2em;">Mark Deisingberg</div> <div style="font-family: cursive; font-size: 1.2em;">65-91 112nd St Flushing</div> <div style="font-family: cursive; font-size: 1.2em;">NY</div>	<input type="checkbox"/> REGISTRATION EXPIRATION DATE <input type="checkbox"/> PLATE NUMBER <input type="checkbox"/> YEAR & MAKE	<div style="font-family: cursive; font-size: 1.2em;">FP5454</div>  <div style="font-family: cursive; font-size: 1.2em;">64 Cad</div>
PRINT NAME AND ADDRESS TO WHICH THE INFORMATION IS TO BE MAILED	<div style="font-family: cursive; font-size: 1.2em;">Dan Blue</div>		
<div style="border: 1px solid black; padding: 5px; width: fit-content;">DO NOT USE THIS FORM FOR DRIVER LICENSE INFORMATION. (USE FORM MV-15-1).</div>	<div style="border: 1px solid black; height: 100px; margin-bottom: 10px;"></div> <div> <input type="checkbox"/> PASSENGER      <input type="checkbox"/> DEALER  <input type="checkbox"/> COMMERCIAL    <input type="checkbox"/> TRAILER  <input type="checkbox"/> MOTORCYCLE  <input type="checkbox"/> OTHER _____         </div>		
<input type="checkbox"/> ADDITIONAL INFORMATION REQUESTED			
LEAVE SPACE FOR ANSWER			
23			

MV-15 (12/67)      STATE OF NEW YORK - DEPARTMENT OF MOTOR VEHICLES



making his defense. Under Section 658 of the Code of Criminal Procedure, relating to insanity, and in Section 870 of the Code of Criminal Procedure, relating to proceedings when a defendant appears to be insane or a mental defective, the law wisely and understandingly provides for mental examinations on the court's own motion or that of the district attorney or that of the defendant.

It would seem, therefore, that, at this time, such a step could be taken if information is brought to the attention of the court that there is reasonable ground to believe that this defendant is in such a state of idiocy, imbecility or insanity that he is incapable of understanding the charge or proceeding, or making his defense. Then there is the defense of insanity which may be pleaded. These are matters which could well have been brought to the attention of the Grand Jury. Perhaps the District Attorney did so.

In any event, the presumption of innocence, which is one of the constitutional rights of this defendant, will continue to prevail, until the contrary is proven beyond a reasonable doubt. Submit order accordingly.



7 A.D.2d 911

Harry APELBAUM, Appellant, v. Helen APELBAUM, Respondent.

Supreme Court, Appellate Division, Second Department.

Feb. 2, 1959.

Action by husband to annul a marriage. The Supreme Court, Benjamin Brenner, J., entered judgment dismissing the complaint on the merits, and husband appealed from such judgment and from the decision upon which it was entered. The Supreme Court, Appellate Division, held that under New Jersey law, the place of the parties' marriage, a person who knows that the one he is about to marry has procured a Mexican decree of divorce without having gone to Mexico, and without service on defendant, is charged with knowledge that such decree is a nullity, and he is deemed to have unclean hands, and will be denied an annulment, and therefore, if such doctrine of unclean hands applied, husband was properly denied an annulment, but even if it did not apply, husband was not entitled to an annulment due to his failure to present any evidence to establish that man from whom wife obtained Mexican divorce was free to marry wife, and thereby failed to establish that her marriage to such man was valid, and that wife was not free to marry husband.

Judgment affirmed; appeal from decision dismissed.

1. Marriage  $\hookrightarrow$  3

Determination of validity of a marriage is governed by law of the state in which the parties entered into the marriage.

2. Divorce  $\hookrightarrow$  367, 373

Under New Jersey law a decree of divorce procured from a Mexican court where the plaintiff did not go to that country, and where service of process was not obtained on the defendant, is regarded as a nullity.

3. Bastards  $\hookrightarrow$  3

Marriage  $\hookrightarrow$  40(9, 11)

Presumptions favoring validity of marriages and legitimacy of children are so strong as to eclipse the presumption that might otherwise protect the validity and subsistence of a prior marriage of one or another of the parties and to place upon the party who seeks to rebut these presumptions the burden of proving that the prior marriage or marriages were valid and not terminated prior to the marriage in question, even though this might require the proof of a negative.

4. Marriage  $\hookrightarrow$  59, 60(7)

Under New Jersey law, the place of the parties' marriage, a person who knows that the one he is about to marry has procured a Mexican decree of divorce without having gone to Mexico, and without service on defendant, is charged with knowledge that such decree is a nullity, and he is deemed to have unclean hands, and will be denied an annulment, and therefore, if such doctrine of unclean hands applied, husband was properly denied an annulment, but even if it did not apply, husband was not entitled to an annulment due to his failure to present any evidence to establish that man from whom wife obtained Mexican divorce was free to marry wife, and thereby failed to establish that her marriage to such man was valid, and that wife was not free to marry husband.

Joseph & Louis Steckler, New York City, for appellant. Joseph Steckler, New York City, of counsel.

Edward Friedman, New York City, for respondent.

Before NOLAN, P. J., and WENZEL, BELDOCK, UGHETTA and HALLINAN, JJ.

MEMORANDUM BY THE COURT.

In an action to annul a marriage, the appeal is (1) from a judgment dismissing the complaint on the merits after trial, and (2) from the decision upon which said judgment was entered.

Judgment unanimously affirmed, with costs.

Respondent entered into a marriage with one Goldman in Austria in 1946. Some months thereafter she settled in this State, and in 1948 she



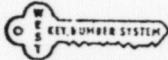
procured a divorce decree from a court in Mexico, without going to that country, and without service of process upon Goldman or his appearance in the action in Mexico. Later that year she married appellant in New Jersey. There is conflicting evidence as to whether appellant induced respondent to procure such decree, made arrangements and paid a fee to an attorney to procure the decree. However, it is undisputed that appellant knew, prior to marrying respondent, that she had procured the Mexican decree without going to that country and without service of process on Goldman, who did not appear in the action. Respondent has a child from each of her said marriages.

[1-4] Determination of the question of the validity of the marriage between the parties is governed by the law of the State in which they entered into the marriage (*Brown v. Brown*, 282 App.Div. 726, 122 N.Y.S.2d 411, affirmed 306 N.Y. 788, 118 N.E.2d 603; *Shea v. Shea*, 294 N.Y. 909, 63 N.E.2d 113). It is the law of New Jersey that a decree of divorce procured from a Mexican court under circumstances such as these is regarded as a nullity (*State v. De Meo*, 20 N.J. 1, 6, 118 A.2d 1, 56 A.L.R.2d 905; *Untermann v. Untermann*, 35 N.J.Super. 367, 114 A.2d 311; *In re Cohen*, 10 N.J. 601, 602, 93 A.2d 4; *State v. Najjar*, 2 N.J. 208, 66 A.2d 37, affirming 1 N.J.Super. 208, 63 A.2d 807; *Tonti v. Chadwick*, 1 N.J. 531, 536, 64 A.2d 436). Parenthetically, the rule is the same in New York (*Caldwell v. Caldwell*, 298 N.Y. 146, 81 N.E.2d 60; *Querze v. Querze*, 290 N.Y. 13, 47 N.E.2d 423). However, it is also the law of New Jersey that a person who knows that the one he is about to marry has procured a Mexican decree of divorce under circumstances such as these is charged with knowledge that such decree is a nullity, that he is deemed as having unclean hands and that he therefore will be denied an annulment (*Tonti v. Chadwick*, supra; cf. *Staedler v. Staedler*, 6 N.J. 380, 78 A.2d 896, 28 A.L.R.2d 1291). If it be correct to apply this New Jersey doctrine of unclean hands in the instant case, that would be a sufficient basis to require affirmance. However, even if that not be so, affirmance is nevertheless required. The presumptions favoring validity of marriages and legitimacy of children are so strong as to eclipse the presumption that might otherwise protect the validity and subsistence of a prior marriage of one or another of the parties and to place upon the party who seeks to rebut these presumptions the burden of proving that the prior marriage or marriages were valid and not terminated prior to the marriage in question, even though this might require the proof of a negative. This rule obtains both in New Jersey and New York (*Matter of Dugro's Will*, 261 App.Div. 236, 25 N.Y.S.2d 88, affirmed 287 N.Y. 595, 38 N.E.2d 706; *Matter of Conklin*, 234 App.Div. 1, 254 N.Y.S. 65, affirmed *Conklin v. Tuttle*, 260 N.Y. 663, 184 N.E. 136; *Johannessen v. Johannessen*, 70 Misc. 361, 365-366, 128 N.Y.S. 892, 895-896; *Sillart v. Standard Screen Co.*, 119 N.J.L. 143, 194 A. 787; *Hefelev. Hefelev.*, 110 N.J.

Eq. 457, 160 A. 368; Keller v. Linsenmyer, 101 N.J.Eq. 664, 139 A. 33). Appellant failed to present any evidence whatsoever to establish that Goldman was free to marry respondent and thereby he failed to establish that respondent's marriage to Goldman was valid and that respondent was not free to marry appellant.

Appeal from decision dismissed, without costs.

No appeal lies from a decision.



15 Misc.2d 591

PEOPLE of the State of New York v. Bernard Robert BRODSKY, Defendant.

Court of General Sessions, New York County.

April 23, 1957.

Prosecution on indictment charging crimes of criminally buying and receiving property as a felony and criminally concealing and withholding stolen and wrongfully acquired property as a felony. Defendants moved for bill of particulars. The Court of General Sessions, Thomas Dickens, J., held he would deny motion as to date of alleged crime, grant motion only to the extent of supplying a description of the property involved, and would deny motion as to the person or persons from whom defendant allegedly bought and received or obtained such property and as to the place where property was bought, received or obtained.

Order accordingly.

Indictment and Information § 121(2)

Where defendant moved for bill of particulars of allegations in indictment charging crimes of criminally buying and receiving stolen property as a felony and criminally concealing and withholding stolen and wrongfully acquired property as a felony, demands would be denied as to date of alleged crime, as to person or persons from whom defendant allegedly bought and received or obtained such property, and as to the place where property was bought and received or obtained; and motion would be granted only to the extent of supplying a description of the property involved. Code Cr.Proc. § 280.

Frank S. Hogan, Dist. Atty., New York City (by Peter J. McQuillan, New York City, of counsel), for People.

Michael Kern, New York City, for defendant.

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until the adverse claim was finally disposed of, was that of a stakeholder or depositary rather than that of an owner. Cf. *Persons v. Gardner*, 122 App.Div. 167, 106 N.Y.S. 616. Since we hold that there was no payment in contemplation of law, it follows that the authorities cited by the appellants, holding that a mortgagor, after making payment to a trustee, is not bound to see to the proper application of the fund by the latter, are not in point.



261 App.Div. 236

In re DUGLO'S WILL.  
Application of BUTTLES.  
Application of DUGLO et al.

Supreme Court, Appellate Division, First Department.

Feb. 7, 1941.

1. Bastards ⇐4

One claiming to be an heir of testator and entitled to participate in trusts established by testator, had the burden of establishing that she was entitled to share in testator's estate, but she met that burden by proving the ceremonial marriage of her mother and testator's grandson, and by establishing that she was the issue of that marriage.

2. Bastards ⇐4

Where one who claimed to be an heir of testator and entitled to participate in trusts established by testator, proved the ceremonial marriage of her mother and a grandson of the testator, and established that she was the issue of that marriage, it was not incumbent on her to prove that her mother's first marriage to one other than testator's grandson was terminated by death, annulment, or divorce, and those opposing the claim were required to establish affirmatively that the first marriage was valid and existing at the time of the marriage of claimant's mother and testator's grandson, and they could not rest on the inference of continuity.

3. Bastards ⇐6

Evidence of those contesting the claim of the daughter of testator's grandson to participate in testator's estate, on ground that proven ceremonial marriage between claimant's mother and testator's grandson was bigamous, was insufficient to establish that the ceremonial marriage was invalid, and claimant as a legitimate descendant of testator was entitled to share in testator's estate as a distributee.

Appeal from Surrogate's Court, New York County; James A. Delchanty, Surrogate.

Proceeding in the matter of the application of Nana Henrietta Butties, as successor testamentary trustee, to execute the trust under the

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last will and testament of Anthony Dugro, deceased, for leave to sell securities and for advice and direction as to the distribution of personality and the collection of rents and payment of operating expenses thereof, and proceeding in the matter of the application of Francis A. Dugro and Dorothea W. Dugro, distributees in the estate of Anthony Dugro, deceased, to compel Nana Henrietta Buttles, successor trustee, to make distribution to Francis A. Dugro, Dorothea W. Dugro, and Katherine D. Wiswall of the proceeds of bonds liquidated by the successor trustee, and proceeding in the matter of the claim of Dorothea W. Dugro, II, opposed by Marvin Dugro Buttles, Jr., individually and as administrator of the estate of Francis A. Dugro, deceased, and others. From a decree of the Surrogate's Court, New York County, adjudging that Dorothea W. Dugro, II, was not the legitimate descendant of Anthony Dugro, deceased, and was not a party interested in the estate of Anthony Dugro, deceased, as a distributee thereof, and dismissing her claim to a status as an heir or distributee in the estate, Dorothea W. Dugro, II, appeals.

Decree reversed, and matter remitted for further action in accordance with opinion.

Argued before MARTIN, P. J., and TOWNLEY, UNTERMYER, DORE, and COHN, JJ.

Thomas R. Purcell, of New York City (John L. Delius, of Mamaroneck, of counsel), for appellant.

Louis Stone, of New York City, for respondents Francis A. Dugro and Dorothea W. Dugro.

Larkin, Rathbone & Perry, of New York City, for respondent Marvin Dugro Buttles, Jr.

Humes, Buck, Smith & Stowell, of New York City, for respondent Philip H. Dugro.

Howard O. Patterson, of Brooklyn, for respondent Katherine D. Wiswall.

Benjamin Shiverts, of New York City, for respondent Nana Henrietta Buttles and general guardian of Paul Vincent Buttles.

MARTIN, Presiding Justice.

The will of Anthony Dugro, who died in 1884, established certain trusts which will ultimately vest in such of his children or their lawful issue as are survivors at the termination of the trusts. The appellant is entitled to participate, if she is the lawful issue of Anthony Dugro. The Surrogate has determined that the marriage of Philip Henry Dugro, grandson of the testator, to the mother of the appellant was bigamous and that, therefore, the appellant is not a legitimate descendant of the testator. The ultimate sole issue before this court is whether Dorothea W. Dugro II is a lawful descendant of Anthony Dugro.

It is admitted that the appellant is the child of Philip Henry Dugro and Sybrania Stanley. The record establishes that Philip Henry Dugro and Sybrania Stanley were ceremonially married in Providence, Rhode Island, on June 13, 1907, by a Baptist clergyman. The appai-



Iant was born in the Borough of Brooklyn, New York, on May 1, 1908. The birth certificate lists P. Henry Dugro as the father, and there is testimony which establishes that he acknowledged the paternity, and during his life he and the appellant occupied the relationship of parent and child.

The respondents produced the record of the marriage of Sybrania Stanley and James McGroarty in the Borough of Brooklyn on July 19, 1905. There was some proof that these parties lived together, and one of the respondents' witnesses testified that a brother of Sybrania had stated that they (Jim McGroarty and Sybrania Stanley) had run away and that they separated. The respondents maintain that less than twenty-three months after the marriage to McGroarty and while McGroarty was still living (he died in 1911) Sybrania Stanley entered into a bigamous marriage with Dugro. The respondents maintain that the proof of a valid previous marriage is adequate factual demonstration of the invalidity of the succeeding one.

[1] The burden of establishing that she is entitled to share in the estate of Anthony Dugro is on the appellant. She met that burden by proving the ceremonial marriage of her parents and establishing that she is the issue of that marriage.

The respondents contend that they have met the burden of going forward by proof of the previous marriage, and it is argued that the presumption of the validity of the second marriage rests on proof of the ceremony performed in Providence, Rhode Island, but this presumption was rebutted by the proof of a prior marriage, since both were so close in time, and the presumption then left was that the first marriage continued to the time the second marriage was attempted. The respondents further argue it was for the appellant to rebut this succeeding presumption by evidence that the McGroarty marriage was invalid in inception or was dissolved.

[2] The respondents do not seem to understand the extent of their burden. It was not incumbent upon the appellant to prove that the first marriage was terminated by death, annulment or divorce. As was said by Surrogate Wingate in *Matter of Callahan's Estate*, 142 Misc. 28, 31, 254 N.Y.S. 46, 52, affirmed 236 App.Div. 814, 259 N.Y.S. 987, affirmed 262 N.Y. 524, 188 N.E. 48: " \* \* \* It must therefore be determined that, as a result of the proof of the ceremonial marriage by the petitioner, the burden of proof, or to use the phrase of Professor Wigmore, 'the risk of non-persuasion' on the general subject, passed from the petitioner to the respondents to demonstrate the invalidity of this marriage. Such invalidity could be shown only by a demonstration that one or the other party thereto was, at the time of its celebration, debarred from entering into the relation. \* \* \*

*Matter of Callahan* involved the invalidity of a second marriage, and, after a discussion of reasons for presumptions, Surrogate Wingate, at page 36 of 142 Misc., at page 56 of 254 N.Y.S., said:

" \* \* \* The petitioner has clearly demonstrated the solemnization of a ceremonial marriage between herself and the decedent. This

gives rise to a presumption of its validity. Not only is there present the logical inference thereof by reason of the common experience of mankind, but there is a distinct and definite public policy to this effect which has been emphasized in innumerable adjudications.

"In *Matter of Biersack*, 96 Misc. 161 at page 166, 159 N.Y.S. 519, 23, affirmed 179 App.Div. 916, 165 N.Y.S. 1077, the following appears: 'The expression of Lord Cottenham in *Piers v. Piers*, 2 H.L. Cas. 233, has frequently been adopted and applied.

"His words were: 'A presumption of this sort, in favor of marriage, can only be negated by disproving every reasonable possibility.' \* \* \* You should negative every reasonable possibility."

"A presumption like unto that which assumes legitimacy is also indulged in behalf of a second marriage, even though children, the fruit thereof, are not involved. There it finds its impulse in the law's jealousy for the order of society."

"Among the many cases containing similar statements, it will suffice to cite the following: *Clayton v. Wardell*, 4 N.Y. 230, 237, 238; *Matter of Meehan's Estate*, 150 App.Div. 681, 682-684, 135 N.Y.S. 723; *Smith v. Smith*, 194 App.Div. 543, 548, 554, 185 N.Y.S. 558; *Matter of Tyrrell*, 115 Misc. 714, 715, 185 N.Y.S. 762, affirmed 198 App.Div. 1001, 190 N.Y.S. 955; *Matter of Goode's Estate (Sur.)* 188 N.Y.S. 188, 189, not reported (in State Report), affirmed 204 App.Div. 877, N.Y.S. 916; *Graham v. Graham*, 211 App.Div. 580, 583, 207 N.Y.S. 195; *Matter of Brigg's Estate*, 138 Misc. 136, 148, 245 N.Y.S. 600, per O'Brien, S., affirmed 232 App.Div. 666, 247 N.Y.S. 1007; *Nesbit v. Nesbit*, 3 Dem.Sur. 329, 331, 332; *Johannessen v. Johannessen*, 70 Misc. 361, 364, 365, 128 N.Y.S. 892; *Matter of Grande's Estate*, 80 Misc. 450, 457, 141 N.Y.S. 535; *Matter of Salvin's Will*, 106 Misc. 111, 112, 113, 173 N.Y.S. 897; *Matter of Rossignot's Will (Sur.)* 112 N.Y.S. 353, 354, not reported (in State Report)."

In *Matter of Tompkins' Estate*, 207 App.Div. 166, 201 N.Y.S. 696, it was said: "The presumption of the validity of a marriage is sufficiently strong to cast the burden of showing its invalidity upon those who attack it. *Hynes v. McDerimott*, 91 N.Y. 451, 458, 43 Am.Rep. 677."

In that case the court quoted from *Hunter v. Hunter*, 111 Cal. 261, 267, 43 P. 756, 31 L.R.A. 411, 52 Am.St.Rep. 180, in part, as follows: "There is also a presumption, and a very strong one, in favor of the validity of a marriage regularly solemnized. Rather than hold a second marriage in alid, and that the parties have committed a crime or been guilty of immorality, the courts have often indulged in the presumption of death in less than seven years, or, where the absent party was shown to be alive, have allowed a presumption that the absent party has procured a divorce. A more correct statement perhaps would be that the burden is cast upon the party asserting guilt or immorality to prove the negative—that the first marriage had not ended before the second marriage." See also *In re Estate of Dedmore*, 1930, 257 Ill.App. 519 and *Routledge v. Githens*, 1926, 118 Or. 70, 245 P. 1072, 45 A.L.R. 922.



The rule is concisely stated in Schouler on Marriage, Divorce, Separation and Domestic Relations, Vol. 2, 6th Ed., at section 1252, at page 1488: "The burden is upon a person who asserts the illegality of a marriage to prove such illegality and where a second marriage is shown as a fact a strong presumption exists in favor of its legality which is not overcome by mere proof of a prior marriage and that the wife had not obtained a divorce before her second marriage. The parties attacking such second marriage have the burden of proof to show that neither party to the first marriage had obtained a divorce."

It is clear from the authorities that the respondents had to affirmatively establish that the first marriage was valid and existing at the time of the Rhode Island ceremony and could not rest on an inference of continuity. Nor is the respondents' burden any less because of the fact that they are endeavoring, through the attack on the second marriage, to have it established that the appellant is illegitimate. On the contrary, as was said in *Matter of Smith's Estate*, 136 Misc. 863, 868, 242 N.Y.S. 464, 472: "While the burden cast by the law upon any person attacking the validity of a de facto marriage is great, the presumption in favor of the marriage is less strong than the presumption that a recognized child is legitimate. *Caujolle v. Ferrié*, 23 N.Y. 90, 35, 107; *Ellis v. Kelsey*, 118 Misc. 763, 766, 195 N.Y.S. 126, affirmed 208 App.Div. 774, 202 N.Y.S. 924, 214 App.Div. 784, 210 N.Y.S. 446, affirmed, as to this matter 241 N.Y. 374, 379, 150 N.E. 148; *Matter of Leslie's Estate*, 175 App.Div. 100, 111, 161 N.Y.S. 790; *Matter of Biersack*, 96 Misc. 161, 166, 159 N.Y.S. 519, affirmed 179 App.Div. 916, 165 N.Y.S. 1077; *Mace v. Mace*, 24 App.Div. 291, 293, 48 N.Y.S. 831."

To succeed, the respondents had to eliminate the possibility that the second marriage was valid and the issue legitimate. *Caujolle v. Ferrié*, 23 N.Y. 90; *Matter of Biersack*, 96 Misc. 161, 159 N.Y.S. 519, affirmed 179 App.Div. 916, 165 N.Y.S. 1077; *Matter of Meehan's Estate*, 150 App.Div. 681, 135 N.Y.S. 723, 724.

The factual situation in *Matter of Meehan's Estate*, supra, is strikingly similar to the situation now before us. Frank C. Meehan and Caroline F. McDonald were ceremonially married on January 30, 1881, and the parties lived together and two children were born of the marriage. On the death of Meehan, in a contest over the right to administer his estate, his brother and sister asserted that the marriage to Caroline F. McDonald was invalid because Meehan had a wife living at the time it was contracted. The record established a ceremonial marriage between Meehan and one Sarah Ruppius on September 16, 1877, followed by their living together for a short time, and there was evidence that Sarah Ruppius was alive after Meehan's second marriage and had been seen in his company after the death of Caroline F. McDonald. In upholding the validity of the second marriage and the legitimacy of the issue thereof, this court said: "While there appears to be no case in this state directly in point, there are numerous decisions in other jurisdictions to the effect that, if necessary to support the legality of the second marriage, it will be presumed, in the absence of evidence to the

contrary, that the first marriage had been legally dissolved." (Citing cases.)

Further: "We think that, where the fact of a marriage, especially of a ceremonial marriage, followed by the long cohabitation of the parties and the birth of children, is established, it is incumbent upon whoever assails the validity of the marriage and the legitimacy of the children to prove his case, by evidence instead of presumptions, even if that involve proof of a negative, and especially when, as here, the attempt is made after the lapse of 30 years and the death of the parties, not by any one claiming rights under an alleged prior marriage, but by relatives who would deprive children of their inheritance by branding them as illegitimates. The appellants have failed to bear the burden of proof imposed upon them. The first marriage may have been legally dissolved, or, what is quite as probable, it may have been invalid because the said Sarah Ruppius had a husband living at the time."

We find nothing that was said in *Matter of Findlay*, 253 N.Y. 1, 170 N.E. 471, opposed to the holdings cited above. In that case, the facts negating probability of access were sufficiently strong to destroy a presumption of legitimacy as to children born after separation, and the court at page 12 of 253 N.Y., at page 475 of 170 N.E. said: "We have no thought to weaken the presumption of legitimacy by allowing its overthrow at the call of rumor or suspicion, or through inferences nicely poised."

The record shows that the declaration of intention of marriage signed prior to the Rhode Island ceremony contains statements as to residence and place of birth claimed not to be in accord with the facts; the number of the marriage is given as "1", and after the query, "Divorce", there is a blank. When McGroarty died in 1911, his death certificate stated he was single. When appellant's mother died in 1909, her death certificate gave her name as "Sybarine McGroarty," and the gravestone on her grave bears the name "Stanley", her maiden name. When appellant's father died, his death certificate described him as single. It is impossible to reconcile all these contradictory statements, and in the absence of proof of the circumstances under which they were made, it is difficult to evaluate them. An example of the unreliability of such statements may be found in the certificate of appellant's birth, which gives her birth date as May 1, 1908, but the date of the report as May 2, 1905. We treat all this evidence as subordinate to the principal established facts, that the appellant's parents were ceremonially married and that she is the issue of the union following that ceremony.

[3] The record here establishes that Philip Henry Dugro, in his lifetime, acknowledged the appellant as his daughter, and the proof offered by the respondents is insufficient to establish that the ceremonial marriage in Rhode Island of the parents of the appellant was invalid.

This court holds that the appellant is a legitimate descendant of Anthony Dugro and entitled to share in his estate as a distributee thereof.



The decree appealed from should be reversed and the matter remitted to the Surrogate's Court for further action in accordance with this opinion.

Decree unanimously reversed and the matter remitted to the Surrogate's Court for further action in accordance with opinion. Order filed. All concur.



**PEOPLE v. STONE.**

Court of Special Sessions, City of New York,

Appellate Part, First Department.

May 20, 1940.

**1. Criminal law § 258(1)**

The term "magistrate", in provision of Penal Law relating to power of magistrate to impose sentence and to suspend execution of judgment and to place defendant on probation, includes a city magistrate. Penal Law, § 2188; Inferior Criminal Courts Act, § 102.

See Words and Phrases, Permanent Edition, for all other definitions of "Magistrate".

**2. Criminal law § 258(1)**

The term "court", in provision of Code of Criminal Procedure relating to authority of court to revoke suspension of execution of judgment of conviction, includes city magistrates, notwithstanding that such provision is found in that part of Criminal Code entitled "of the proceedings in criminal actions prosecuted by indictment". Code Cr.Proc. § 470-a; Inferior Criminal Courts Act, § 102.

See Words and Phrases, Permanent Edition, for all other definitions of "Court".

**3. Criminal law § 1001**

The power to suspend sentence is the same as the power to suspend execution of sentence and flows from the common-law power of right to impose punishment. Penal Law, § 2188.

**4. Criminal law § 258(1)**

Under statutes, city magistrate's court has power and discretion in the control of its suspended judgments, whether or not defendant has been placed on probation. Inferior Criminal Courts Act, §§ 102, 122, 125, 152, 154.

**5. Criminal law § 1001**

The statute relating to authority of court to revoke suspension of execution of judgment of conviction is a procedural statute capable of general application to all criminal actions or proceedings. Code Cr.Proc. § 470-a.

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Accordingly we suspend further consideration of the appeal herein pending a remission of the matter to the Special Term for such action as the parties may be advised.

Further consideration of the appeal herein is suspended pending a remission of the matter to the Special Term for such action as the parties may be advised.

FOSTER, P. J., and HEFFERNAN, BREWSTER, BERGAN and COON, JJ., concur.



**MYERS v. TUTTLE et al.**

Supreme Court, Appellate Division, Third Department.

Sept. 19, 1951.

Workmen's compensation proceeding by Audrey Myers, on behalf of herself and Robert D. Myers, minor child of Robert D. Myers, deceased employee, against Sam Tuttle, doing business as Liberty Machine Company and Merchants Mutual Casualty Company, to recover for the death of Robert D. Myers, deceased employee. The Workmen's Compensation Board found that claimant had been married to deceased employee in Maryland, and granted award to claimant, and the employer and insurance carrier appealed. The Supreme Court, Appellate Division, Bergan, J., held that where deceased employee and claimant had publicly maintained relationship of husband and wife, there was a presumption that a valid marriage had been performed by one authorized to solemnize marriages under Maryland law, and there was substantial evidence to support finding of board.

Affirmed.

**1. Marriage ⇨27**

To be a valid marriage in Maryland, solemnization must be by the kind of officer enumerated in the statute. Code Md. 1939, art. 62, § 4 et seq.

**2. Marriage ⇨40(4)**

Where couple publicly maintained relationship of husband and wife, there was a presumption of a valid marriage, which presumption included the authority of the person who officiated to solemnize a marriage.

**3. Evidence ⇨83(1)**

In workmen's compensation proceeding to recover for death of alleged husband, where defense was that valid marriage had not been

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performed by one authorized under Maryland laws to solemnize marriages, there was a presumption that the person who officiated at the ceremony would not by an unauthorized solemnization of marriage commit an act offensive to the laws of Maryland. Code Md.1939, art. 62, § 4 et seq.

4. Workmen's Compensation  $\hookrightarrow$  1474

In workmen's compensation proceeding for death of alleged husband, evidence that a justice of the peace sign was outside the door where marriage ceremony had been performed, was insufficient to overcome presumption that there had been a valid marriage, solemnized by one authorized under Maryland statute to perform marriages, and finding that there had been a valid marriage was supported by substantial evidence. Code Md. 1939, art. 62, § 4 et seq.

Deckelman & Schadt, Jeffersonville, for claimant-respondent.

Baier & Chamberlin, Buffalo (Louis L. O'Brien, Buffalo, of counsel), for appellants.

Nathaniel L. Goldstein, Atty. Gen., for respondent, Workmen's Compensation Board.

Before FOSTER, P. J., and HEFFERNAN, BREWSTER, BERGAN and COON, JJ.

BERGAN, Justice.

In the course of his employment Robert D. Myers was killed in 1948 while operating a crane. The question presented by the appeal is whether there is substantial evidence upon which the Workmen's Compensation Board could find, as it has, that the claimant is his widow.

Claimant testified that on November 17, 1947, she and the decedent, both then residents of New York, joined in a ceremonial marriage at Elkton, Maryland. The arrangements for the marriage were made by the decedent out of claimant's presence. She did not know the name of the person who solemnized the marriage nor the nature of his office. He had a book in his hand. The husband signed some papers; a fee was paid; there were other people in the room. Outside the building there was a sign "justice of the peace".

The parties later went to Florida where they resided for some months, and the proof is clear and wholly uncontradicted they lived publicly as husband and wife; treated each other as such; were treated by their families and acquaintances as married. Proof of this was offered independently of claimant's testimony.

There is proof of the mailing out of formal announcement of the marriage of November 17, 1947. A child was conceived from the relationship and born after the husband's death. Documentary proof sustains

the fact the parties treated each other as being married. There is, however, no record evidence of the ceremonial marriage itself.

[1] The marriage law of Maryland creates the problem. The statute there enumerates the officers who may solemnize marriage. Public General Laws, Maryland, Article 62, sections 4, 5 et seq. They must be religious officers of some kind. Nothing in the statute requires the ceremony itself be religious; nor, indeed, is it necessary that the officer be a minister of the gospel. He may also be an "official" of a religious "order" or "body" authorized by its customs or by its rules to "join persons in marriage". Section 4. To be a valid marriage in Maryland, solemnization must be by the kind of officer enumerated in the statute. *Denison v. Denison*, 35 Md. 361, 379; *Knapp v. Knapp*, 149 Md. 263, 131 A. 329.

[2] From a publicly maintained relationship of husband and wife, such as this record discloses, there springs a powerful presumption of the pre-existence of a valid marriage. The presumption must necessarily take within its sweep the authority of the officer to solemnize it under municipal law of the place of performance as well as the fact of solemnization itself.

We accept, therefore, under the law of New York a presumption that the officer who married claimant in Maryland was authorized to do so. What the record discloses about him is not inconsistent, in the sense of being destructive to that presumption, with his being an official of a religious body or order by custom authorized to do what this record shows he did openly and at the request of the decedent.

In judicial language of considerable warmth and force, Judge Andrews in *Hynes v. McDermott*, 91 N.Y. 451, 458, dealt with the New York presumption of a valid marriage arising from a publicly maintained relationship of husband and wife. He felt the presumption to be "one of the strongest" which our law knows. A justice of the peace sign outside the door does not sweep all of this aside.

[3] There is, of course, the additional presumption that the officer would not by an unauthorized solemnization of marriage commit an act offensive to the laws of Maryland. A case of counter-balanced presumptions as to marriage and the non-criminal nature of acts in relation to marriage is *Palmer v. Palmer*, 162 N.Y. 130, 56 N.E. 501. But here, the two presumptions implement and re-enforce each other. The presumption thus attaching to the validity of the solemnization of marriage reaches equally the authority of the officer, even though the entire proof addressed to the marriage be entirely circumstantial.

In *Betsinger v. Chapman*, 1882, 88 N.Y. 487, 488, the parties concededly were married on January 20, 1864; the question that became important in the case was whether they had previously been married, as the complaint alleged, on May 24, 1863. The evidence of the first marriage



was "entirely circumstantial" and there was no proof of "the actual solemnization". 88 N.Y. at pages 497-498.

Still the proof showed the parties after May 24, 1863 treated each other in marital relationship; and while proof of this was somewhat general in nature it was regarded by the court as sufficient, when aided by the presumption, in support of a definite, dated, ceremonial marriage to survive the motion for non-suit. In *Chamberlain v. Chamberlain*, 71 N.Y. 423, somewhat similar proof was held to make out a case of formal marriage *prima facie*, although it was there held rebutted on the whole case.

[4] All of this, surely, would seem to us to cover in the authority of the officer in Maryland to solemnize the marriage and to answer what need be answered in support of the finding of the Board that there was a valid Maryland marriage. Cf. *Matter of Konieczny v. J. Kresse Co., Inc.*, 234 App.Div. 517, 256 N.Y.S. 275.

In a precautionary spirit the Board has found, additionally, that there was a presumption of common law marriage arising from the parties' residence in Florida consistent with the law of that State and their confirmation of their marriage there. There is some force to this additional ground for validity, although the view has been strongly expressed in New York that where parties believe they have had a ceremonial marriage, the intent and mutual consent necessary to "adopt" the "relationship" of a common law marriage are wanting. See the exhaustive study of the subject by Merrell, J., in *Smith v. Smith*, 194 App.Div. 543, 185 N.Y.S. 558.

Still the weight of New York authority perhaps is the other way as to a foreign common law marriage. There is no doubt that the parties in *Hynes v. McDermott*, supra, regarded themselves married by a specific contractual arrangement made in England, the equivalent in point of specific time and place, at least, of a ceremonial marriage. While this marriage was held invalid, a subsequent common law relationship evoking the presumption of marriage in France was recognized by the New York court as having arisen from the cohabitation of the parties in France, 91 N.Y. at page 462, even though they themselves seem to have relied on their English marriage which the New York court held invalid under English law. It is unnecessary in our view of the case, however, to go further than to decide that the Maryland marriage is valid.

The decision and award should be affirmed with costs to the Workmen's Compensation Board.

Decision and award affirmed, with costs to the Workmen's Compensation Board.

FOSTER, P. J., and HEFFERNAN, BREWSTER and COON, JJ., concur.

MEMORANDUM OF LAW

RE: FRIEDA ROSENBERG  
S.S. # 089-01-9395

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F A C T S

Mr. & Mrs. Rosenberg were married by a justice of the peace in the State of Connecticut on October 26, 1935. Both parties had been previously married and both believed, in good faith, that their subsequent divorces were valid, and that there were no legal obstacles to their second marriage.

The parties have lived together as husband and wife for 35 years. After a second coronary attack in October, 1966, Max Rosenberg was advised by his doctor to stop work and go away and relax in order to remain calm. He was provided with a quiet place to stay by his sister. He states, however, that he still votes in Flushing and considers Flushing his permanent home. He returns home about once a month during the winter and always spends May through September with his wife. He has always provided financially for his wife by paying the rent for their apartment in Flushing and paying for the health insurance. He still remains in poor physical health.

I S S U E

Whether the applicant, Mrs. Frieda Rosenberg, is entitled to social security benefits of Max Rosenberg under Section 216(h) 1B of Title II.

SECTION 216(h) 1B

Where an applicant is not the wife of an insured individual but that such applicant, in good faith, went through a marriage ceremony with such individual resulting in a purported marriage between them which but for a legal



impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant filed the application, then, for purposes of subparagraph (A) and subsections (b), (c), (f) and (g), such purported marriage shall be deemed to be valid marriage.

P\_R\_E\_L\_I\_M\_I\_N\_A\_R\_Y\_S\_T\_A\_T\_E\_M\_E\_N\_T\_

The courts have been severely critical of narrow construction in cases interpreting such statutory requirements as "living together", living with" or "living in the same household", or "living under the same roof". Decisions have attempted to reach the broad intent of the legislature from a practical and reasonable point of view. At the outset, the need to be physically living together is eliminated. The courts look to the intent of the parties as well as all the evidence rather than the one specific fact of living together.

As one poetic judge so aptly observed, "The agent of his country is diplomatic service in foreign lands, the merchant in the prosecution of his business on the islands of the sea and to better his fortunes, and the traveler for pleasure, or in the interest of science in the polar regions, are each and all living with their wives and in their homes, in the meaning of our statute."

A "HUSBAND" IS CONSIDERED  
LIVING WITH HIS "WIFE"  
ALTHOUGH NOT PHYSICALLY  
SHARING THE SAME HOUSEHOLD  
IF THE PARTIES DO NOT INTEND  
TO SEVER THE DOMESTIC RELATIONSHIP.

In Berg v. Industrial Commission 294 NW 506, the insured, Peter Berg, was a heavy drinker and his wife was in very poor health. She found it difficult to care for her husband, and in addition, was afraid that he would be hurt in an accident coming home from work while in a drunken condition. Sleeping quarters were therefore provided for Mr. Berg in his son's factory and the parties were physically separated for their mutual welfare and convenience.

The separation continued until his death. Yet, the Industrial Commission held that she was living with her husband and supported this conclusion with the indisputable fact that there never was a legal or actual severance of or break in the marital relation which continued to exist between them. On appeal, the State Supreme Court affirmed this finding.

The facts in this case are similar to the Rosenberg matter. As Mr. Berg was provided with sleeping quarters by his son, Mr. Rosenberg was provided with a place to live in his sister's home. Also, both parties relocated due to their own welfare. The Court's statement, that "It was never intended by anyone that his going... would be permanent, and there was considerable discussion between him and his wife about his returning home", is language that also could be applied to both cases.



The fact that Mrs. Berg "discussed financial matters with him and he helped her out with whatever she needed" are facts that apply to both cases as it is established that Mr. Rosenberg has paid for the rent of his wife as well as for her health insurance.

The Court held that the lower court had correctly construed the meaning of the phrase, "living with".

In Sheaffer v. Penn Dairies, Inc. 56 A2 368, 161 PA Super 583, 1948, the court offered guidelines by which to judge if a couple were living with each other.

In this case the parties from the initial day of the marriage until the husband's subsequent death, never lived together under the same roof. Yet, the court held that the parties were in substance and in spirit living with each other.

"Whether parties are 'living with' each other is a question of fact, but it is to be determined, not by consulting only one facet of the relationship, but by inspecting the whole picture. And where it is found that for the convenience of the parties, or for some other moving and reasonable motive they dwell in separate homes without estrangement or repudiation or release of their legal obligations, and with constant recognition of the marital tie, it is no strain upon logic or credibility to find that they were 'living with' each other. (Cite omitted) For in this class of cases, we look beyond the form to the substance from outward appearances to the realities behind them.

The court further criticized the board's erroneous narrow interpretation of the requirement that the parties live together under the same roof by stating:

"The board, as its findings indicates, construed the phrase too narrowly, and having discovered the one fact that the parties did not occupy the same living quarters rested its findings that they were not living together solely upon that circumstance."

It was incorrect for the board to concentrate its attention upon this one fact.

In the Stewart Comp. v. Cristmas 79 So 2, 526, 1955, the court noted that living together does not always mean a common place of living. It "means living as husband and wife with voluntary recognition of the relationship and no design or agreement to live apart with the chief end in view that of living apart free from reciprocal mental rights and duties."

As in the Rosenberg situation, here the facts warrant a practical reason for the physical absence of one spouse from the house. The husband worked at his profession at logging camps but always came back home to provide all of the support money for his wife.

The court points out that while physically the parties may be ~~separate~~, the parties are in spirit living together and this interest to live together brings the party within the meaning of the statute.

In Delaware County Trust Co. v. General Chemical Co., b 4A 2, 608, the court was faced with the question whether a wife had been living with her husband when in fact the wife was separated from her husband for the last



12 years of his life because of her mental illness.

The court ordered compensation be paid to this wife finding that the character of the separation was not one that the statute intended. Here the parties were physically separated but out of necessity, brought about solely by the chronic illness of the wife. In the Rosenberg matter too, a separation of a much shorter period was involved but it was out of necessity brought about solely by the illness of the husband.

The court states that a liberal interpretation should be given to the phrase "living with" her husband, and confirms our argument that "the question involved is largely one of intention."

"The question does not turn upon time or distance separating the parties, but upon the nature and character of the absence and the intention of the parties in relation thereto."

"If the phrase, as indicated, should receive the opposite interpretation, that is that there must be a physical dwelling together in order to support a finding that a husband and wife were living together at the time of the husband's death, the purpose of the enactment in many instances would be defeated, as often a wife may be absent from home for long intervals although there be no break in the marriage relation, no estrangement, and no intent to separate or change the relations or obligations created by the marriage contract."

C O N C L U S I O N

The determining factor in this case is that the parties intended to preserve the spirit as well as the obligation of the marriage. Searching the record one does not find either a legal separation or an actual separation in the nature of an estrangement.

WHEREFORE, the applicant submits that she is legally entitled to receive benefits under the social security act.

Dated: New York, New York  
June 16, 1970

Yours, etc.

MORRIS AARONS

By: Stuart Babitch

EXHIBIT

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